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What union coverage numbers might look like without NLRA preemption

Working paper prepared for the September 19, 2017 symposium on NLRA preemption hosted by the Harvard Labor and Worklife Program and the Economic Policy Institute

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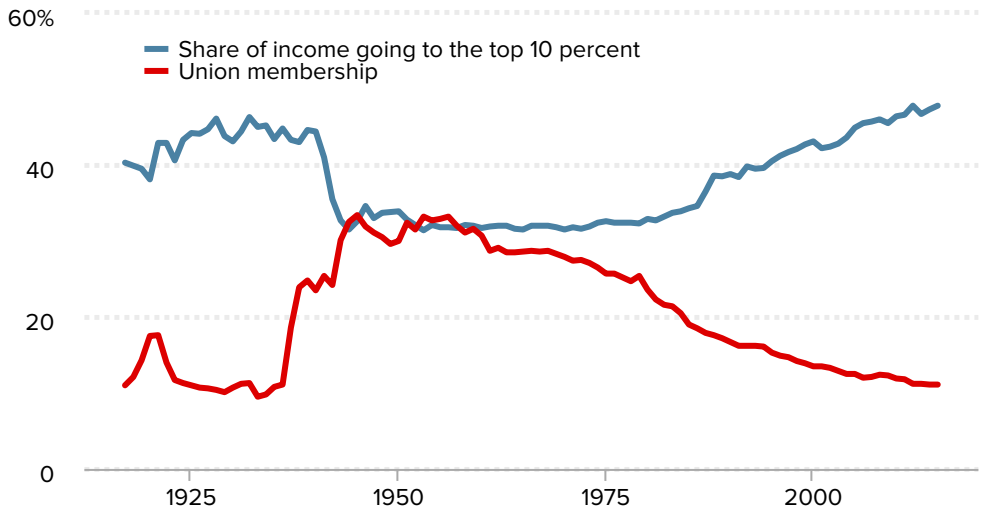
Introduction and background

The expansion of collective bargaining that followed the passage of the National Labor Relations Act (NLRA) in 1935 led to decades of faster and fairer economic growth that persisted until the late 1970s. But since the 1970s, declining unionization has fueled rising inequality and stalled economic progress for the broad American middle class. These trends need to be halted and reversed.

Figure A

Union membership and share of income going to the top 10 percent, 1917–2015



Sources: Data on union density follows the composite series found in Historical Statistics of the United States; updated to 2015 from unionstats.com. Income inequality (share of income to top 10 percent) data are from Thomas Piketty and Emmanuel Saez, "Income Inequality in the United States, 1913–1998," *Quarterly Journal of Economics* vol. 118, no. 1 (2003) and updated data from the Top Income Database, updated June 2016.

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An idea that is gaining some traction is to address the fact that, under current law, the NLRA "preempts" any state or local law related to labor relations for private sector workers. Unlike with most federal wage, hour, and anti-discrimination laws — which establish floors above which states and localities are able to innovate in ways that provide greater worker rights and protections — the NLRA is both a floor and a ceiling. One obvious idea would be to reform the NLRA so that it remains a floor but not a ceiling. This would allow states and localities to experiment with ways that could empower new kinds of collective action without imperiling existing rights and protections.

Some have further suggested that, if it is not possible politically to do away with just the ceiling, doing away with NLRA preemption entirely should be considered. The paper investigates the question of what union coverage numbers might look like without NLRA

preemption.

Replicating Freeman approach with updated data

There is only one other paper we know of that attempts to address this question quantitatively, the 2006 paper "Will Labor Fare Better Under State Labor Relations Law?" by Richard B. Freeman. In his paper, Freeman compares estimates of the potential loss of coverage in states most likely to enact state laws unfavorable to private sector collective bargaining with the potential gain in states most likely to enact laws favorable to private sector bargaining. He notes that his estimates are "back-of-the-envelope/excel computations that give orders of magnitudes only," and we approach this exercise in a similar spirit.

Freeman's analysis turns on the fact that while federal law governs private sector labor relations (and, except in the case of "right-to-work" (RTW) legislation, states are precluded from taking independent action), *state* law sets labor relations policy for state and local public sector workers. Thus every state has both private employees covered by federal law, and public employees covered by state law. Further, state laws vary enormously. He notes that this variance provides a natural experiment "in which we can contrast outcomes for the treatment group – public sector employees covered by that state's public sector laws – against the control group of private sector employees in that state covered by the ubiquitous federal law."

Based on a 1996 update by Kim Rueben of the NBER Valletta-Freeman state public sector labor law data set (http://www.nber.org/publaw/), Freeman places states into three broad categories of favorability of the legal environment for public sector bargaining: "Favorable" states where laws require that public employers bargain with unions; "Intermediate" states where the law requires public employers to meet and confer with unions but not to bargain with them; and "Unfavorable" states where the law either explicitly outlaws bargaining or contains no provision for bargaining. This categorization can be found in column (1) of Table A1 in the Appendix.

Freeman regresses public sector union coverage rates on dummy variables for whether the state has public sector laws that were either "Favorable" or "Unfavorable," (the omitted dummy is "Intermediate"), controlling for private sector union coverage rates and a dummy variable for whether the state has a RTW law. Given that private sector workers in each state are covered by a common federal law, controlling for private sector union coverage and RTW is assumed to control for the state's general attitude toward unionism. In other words, the coefficients on the "Favorability" dummies capture the effect on public sector union coverage of the state laws themselves, apart from the state's *general* favorability towards unions.

Freeman used 2004 data on union coverage. We update this by using data for the 12 months ending in April 2017 (the latest data available at the time of analysis). Our main

Table 1

Results using Freeman methodology, current union coverage data and 1996 state favorability rankings of public sector labor laws

	States with public sector labor laws unfavorable to collective bargaining in 1996	States with public sector labor laws favorable to collective bargaining in 1996
Total Private Sector Employment, in millions	37.1	69.7
Number of Private Sector Unionized Workers, in millions	1.6	6.3
Potential Loss/Gain of Private Sector Union Members, in millions	-0.4	1.9

Source: Authors' analysis of Current Population Survey Outgoing Rotation Group microdata, 12 months ending April 2017.

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data can be found in columns (4), (5), and (6) of Table A1. Using the same state favorability rankings that Freeman used (which is based on the state of the world in 1996), we find that favorable public sector labor laws increase public sector coverage by approximately 26.1 percent, and that unfavorable public sector labor laws decrease public sector coverage by approximately 26.9 percent. The results of this regression can be found in column (2) of Table A2.

Table 1 shows the results of applying these regression results to *private sector* union coverage numbers, under Freeman's (in our view heroic) assumption that, freed from NLRA preemption, all states with unfavorable public sector labor laws will enact equally unfavorable laws in the private sector, and states with favorable public sector labor laws will enact equally favorable laws in the private sector. With this assumption, we project that if states set labor relations policy for the private sector, there would be a loss of roughly 400,000 private sector union members in states likely to enact unfavorable legislation, and an increase of roughly 1.9 million in states likely to enact favorable legislation. This appears to show that unions would fare better on net at the national level in the absence of NLRA preemption.

However, one obvious flaw in the above analysis is that Freeman's favorability classifications are more than 20 years old at this point. During that time, state politics have shifted significantly to the right; the Republican Party controls 33 governorships and has majority representation in both chambers of most state legislatures. This results in a number of states classified in 1996 as "Favorable" labor environments that may now be deemed "Intermediate" or that had been classified as "Intermediate" and may now be deemed "Unfavorable," based on legislation adopted in the past two decades.

We have updated the categorization, attempting to adhere as closely as possible to Freeman's definitions of favorable, unfavorable and intermediate labor law regimes. The cohort of no-longer-favorable states is led by Wisconsin, which with the passage of Act 10

in 2011, has become one of the single bleakest legal environments for public employee unions. The complete updated categorization can be found in column (2) of Table A1. The table also includes an explanation for any changes. Critically, there are no states whose legislative history over the past decade might suggest upgrading their favorability for pro-union labor law reform.

It should be noted that while changes in public sector labor laws have the most direct application to Freeman's model, other areas of state labor and employment law that provide relevant input for analyses later in this paper are also included in the explanation of changes. These include RTW laws; the extension or revocation of collective bargaining rights to employees outside NLRA jurisdiction; laws governing union dues and union political activity in both the public and private sectors; prevailing wage and project labor agreements in the construction industry; and laws governing the non-union labor market including minimum wage, sick leave, employment discrimination, unemployment insurance, or pension rights. All of these provide a critical measure of a given state's center of political gravity when it comes to regulating the labor market.

Using our updated favorability rankings, Freeman's methodology results in a finding that favorable public sector labor laws do not have a significant effect on public sector coverage, and that unfavorable public sector labor laws decrease public sector coverage by approximately 43.1 percent. The results of this regression can be found in column (4) of Table A2. Because we do not believe that there would be *no* positive impact on union coverage of states adopting favorable laws, we view this as a breakdown of the empirical approach in the context of updated state rankings.

For completeness, however, we apply the updated regression results to private sector union coverage numbers, again under Freeman's assumption that, in the absence of NLRA preemption, all states with unfavorable public sector labor laws will enact equally unfavorable laws in the private sector, and states with favorable public sector labor laws will enact equally favorable laws in the private sector. Using this method, we find that if states controlled labor relations policy for private sector workers, there would be a loss of roughly 700,000 private sector union members in states likely to enact unfavorable legislation, and no change in states likely to enact favorable legislation.

The breakdown of Freeman's back-of-the-envelope empirical strategy in the context of updated state favorability rankings points to a need for a more robust theory regarding the contemporary politics of labor law reform in order to project the outcome of labor policy debates in current state legislatures. In particular, it can no longer be assumed that the politics governing private sector labor law reform would be identical to those that drove deliberations over public sector union rights — deliberations that in many cases took place decades ago.

There are several factors regarding the political landscape that need to be considered. First, the power of money in politics has grown ever-more extreme in recent decades – particularly in the aftermath of the Supreme Court's 2010 *Citizens United* ruling. Because the political spending of employer lobbies dramatically outpaces that of unions, the political influence of anti-union forces has significantly strengthened in the years since

Table 2

Results using Freeman methodology, current union coverage data and current state favorability rankings of public sector labor laws

	States with current public sector labor laws unfavorable to collective bargaining	States with current public sector labor laws favorable to collective bargaining
Total Private Sector Employment, in millions	42.1	42.2
Number of Private Sector Unionized Workers, in millions	1.9	4.3
Potential Loss of Private Sector Union Members, in millions	-0.7	0.0

Source: Authors' analysis of Current Population Survey Outgoing Rotation Group microdata, 12 months ending April 2017.

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Freeman's original analysis. Secondly, for reasons explained below, the political influence of the corporate lobbies has been even greater at the state level than in the federal government; waiving NLRA preemption would turn labor law over to the legislative arena that is most favorable to anti-union employer lobbies. Third, corporate political activism has always been most intense around questions of private sector – rather than public – labor law. Thus we cannot assume that the politics of public sector labor policy would be reproduced for the private sector. Fourth, while public employers are fixed in place and are not in competition with other states' services, the ability of private employers to move from one state to another, or to force unions to bargain with a multi-state employer, may undermine the bargaining power of workers even in the most politically favorable states. Fifth, as employer lobbies have been growing ever stronger, their ambition to cripple labor unions has produced much more draconian legislative initiatives than what was imaginable even a decade ago. Sixth, there are substantial barriers that limit the ability of even the most progressive state governments to adopt far-reaching pro-worker reforms (for example, even New York's Democrats have been unable to overcome the opposition of the agriculture lobby to extend organizing rights to this industry). And finally, there are important dynamic differences between pro- and anti-union labor law reforms in that pro-union reforms in recent years typically usher in a period of significant but incremental growth, while anti-union laws often pose immediate and near-existential threats to the labor movement. Each of these factors will be described in detail below.

Employers' political influence has increased dramatically since the 2010 Citizens United ruling

The Supreme Court's 2010 *Citizens United* decision ushered in a new legislative era, shaped by the impact of unlimited corporate spending on politics. That fall's elections were the first conducted under the new rules, and they brought dramatic change. Eleven state governments switched from Democratic or divided control to Republican control of the governorship and both houses of the legislature. Since these lawmakers took office in early 2011, the US has seen an unprecedented wave of legislation aimed at lowering labor standards and slashing public services.

At the heart of this activism are the country's premier business lobbies – the Chamber of Commerce, the National Association of Manufacturers, and the National Federation of Independent Business – along with the AFP and industry-specific groups such as the National Grocers Association and the National Restaurant Association.

The steadily growing economic inequality of the past four decades has led, in turn, to increased political inequality. While business has always enjoyed outsized political influence, its voice has grown even more dominant in recent years. Elections for public office have become dramatically more expensive, rendering politicians all the more dependent on those with the resources to fund their campaigns.[1] The increasing concentration of wealth has produced a growing class of mega-donors prepared to spend enormous sums to influence outcomes. And, finally, the progressive loosening of campaign finance regulations – culminating in the *Citizens United* decision – has enabled corporations and the wealthy to spend unlimited amounts on elections, and to do so secretly. The intersection of these three factors has dramatically increased the political influence of those at the top of the economy.

Political spending was heavily tilted toward corporations long before *Citizens United*; on average, from 2000-2010, business typically outspent labor unions by ten to one in federal elections.[2] In theory, *Citizens United* allowed for unlimited spending by both corporations and unions. In reality, however, the resource imbalance between these groups is so extreme as to render the comparison meaningless. The annual revenue of Fortune 500 companies alone is 350 times that of the labor movement.[3]

The 2008 election – which put Democrats in control of both houses of Congress as well as the White House – struck fear into the hearts of energy executives worried about climate change legislation, financial titans anticipating new regulations, and insurance companies facing the demand for affordable healthcare. These fears, in turn, drove scores of new donors to join the Chamber of Commerce or the Koch network. As one Koch insider describes, "Obama's election had sparked such vitriol on the right that [the Kochs] were almost overwhelmed by the number of wealthy donors eager to join them. Suddenly they were raising big money!"[4] The first Koch donor summit, in 2003, drew only 15 participants.[5] As late as June 2009, the event raised just $13 million. By 2015, however, the

network attracted 450 donors and solicited nearly $900 million for the upcoming election season.[6] Longtime campaign finance watchdog Fred Wertheimer commented that "we've had money in the past, but this is so far beyond what anyone has thought of it's mind-boggling."[7] The *Citizens United* decision was critical to the growth of the Kochs' and similar corporate advocacy groups – particularly those who wanted to shield donors' identity.[8]

Corporate spending has increased dramatically since the *Citizens United* decision. Advocacy organizations spent just over $140 million on the presidential and congressional elections in 2008. Four years later, advocacy organizations spent $1 billion on federal elections, the great bulk of it from businesspeople and corporate organizations.[9] Both the U.S. Chamber of Commerce and the Club for Growth more than doubled their spending from 2008 to 2012. In addition, a slew of new corporate-funded advocacy organizations appeared during this period. Taken together, spending by the major corporate-funded groups was more than six times higher in 2012 than in 2008.[10]

American Legislative Exchange Council (ALEC), the most important national organization advancing the corporate agendaat the state level, brings together 2,000 member legislators (one-quarter of all state lawmakers, including many state senate presidents and House Speakers), and the country's largest corporations to formulate and promote business-friendly legislation.[11] According to the group's promotional materials, it convenes bill-drafting committees – often at posh resorts – in which "both corporations and legislators have a voice and a vote in shaping policy." Thus, state legislators with little time, staff, or expertise are able to introduce fully formed and professionally supported bills. The organization claims to introduce 800-1,000 bills each year in the 50 state legislatures, with 20 percent becoming law.[12]

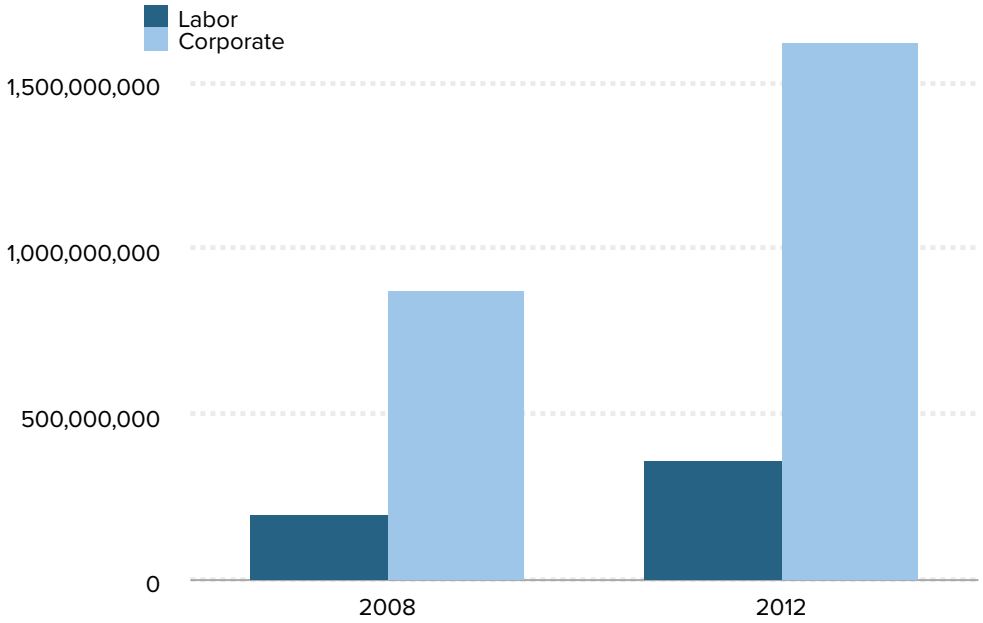
Ultimately, the "exchange" that ALEC facilitates is between corporate donors and state legislators. The corporations pay ALEC's expenses and contribute to legislators' campaigns; in return, legislators carry the corporate agenda into their statehouses.[13] Member corporations also fund the ALEC-affiliated State Policy Network, whose pro-corporate think tanks produce policy papers in support of model legislation.[14] In the first decade of this century, ALEC's leading corporate backers contributed more than $370 million to state elections, and over 100 laws each year based on ALEC's model bills have been enacted.[15] Through this network, corporate lobbyists have established a well-funded, highly effective operation that combines legislative drafting, electoral politics, lobbying, grassroots activism, and policy promotion.

Employer lobbies' political influence is greatest at the level of state legislatures

Many of the factors that strengthen corporate political influence are magnified in the states. First, far fewer people pay attention to state government, implying wider latitude for

Figure C

Corporate and Union Spending on State Election Campaigns, 2008 and 2012



Source: National Institute on Money in State Politics

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well-funded organized interests. Political scientist Martin Gilens notes that only when policy debates attract widespread public attention are politicians even modestly responsive to the bottom 90 percent of the population.[16] Yet if such attention is rare at the federal level, it is rarer still in the states. Less than one-quarter of adults are able to name their state senator or representative, and less than half even know which party is in the majority.[17] Thus, even the crudest form of political accountability – voting against the party in power when the economy turns bad – does not function at the state level.[18]

If most people can't name their legislators, how many are likely to have a well-formed opinion on whether prevailing wages should be required on public construction projects worth more than $25,000? How many can possibly be paying attention to debates about changing the definition of employee "misconduct" – changes that affect eligibility for unemployment insurance benefits? For all practical purposes, these debates take place in a vacuum. Apart from labor unions and a handful of progressive activists, the corporate agenda on such topics encounters little public resistance at the state level, because hardly anyone knows about or understands the issues.

By contrast, an organization such as ALEC simply could not flourish at the federal level. Senators and House members cannot sit down with lobbyists three times a year to draft model bills – subject to the approval of corporate funders – that are then introduced in the Congress. There are too many interest groups, too much media attention, and too many

rank-and-file voters watching what happens. ALEC's ability to operate so effectively for so long owes much to the invisibility of state government to most citizens.

So, too, corporate lobbies' financial advantage is magnified in the states. *Citizens United* marked a sea change in state as well as federal politics. As of 2010, 22 states maintained bans on independent political expenditures by corporations or labor unions; all were overturned by the Supreme Court's decision. The first major analysis measuring the impact of the legal change on state legislatures found that the net result was to increase the odds of a Republican being elected by four percentage points, primarily as a result of increased business contributions.[19]

Because state legislative races are so much cheaper than federal elections, those contributions go much further. Consider North Carolina, where a network of organizations overseen by supermarket executive and corporate activist Art Pope spent $2.3 million on 27 legislative races in 2010.[20] In 2008, the average North Carolina Senate candidate spent a little under $140,000, and the average House candidate spent approximately $60,000.[21] Two years later, Pope's network contributed an average of $134,000 to each of the targeted Senate races, and $59,000 to each House race – effectively doubling the previous campaign budgets.[22] Republicans won nearly 80 percent of the seats Pope targeted in 2010, and the GOP gained complete control of the state legislature for the first time since Reconstruction.

The corporate lobbies' resource advantage is manifested not only in elections, but also in growing influence over the legislative process once lawmakers are seated. Over the past four decades, state legislative districts have been repeatedly redrawn in order to maximize the number of safe seats for each party.[23] As a result, incumbent Republicans have no incentive to govern as centrists, but strong reason to fear a well-funded primary opponent. Such a system, in turn, maximizes the power of the corporate purse. In competitive districts, the threat to primary an incumbent Republican from the right would be self-defeating – even if effective it would likely result in failure in November. Under current conditions, however, corporate lobbies can wield the threat of a primary challenger to enforce discipline on sitting legislators. In 2013-15, for example, Americans for Prosperity carried out an aggressive, well-funded campaign to attack Republican governors and legislators who sought to take advantage of funds available under the Affordable Care Act to expand Medicaid for their low-income citizens. In Florida, Kansas, Tennessee, and Utah, AFP put scores of staff to work, spent millions of dollars on advertising, conducted intensive phone-bank and canvassing operations in key legislators' districts, and succeeded in reversing plans that initially enjoyed broad Republican support. In Kansas, a national AFP representative publicly warned senators that "we certainly plan to hold accountable every legislator who supports this misguided scheme." The bill's sponsor was shocked, noting that he had never before "heard a [witness] threaten members in testimony."[24]

Such threats – whether implied or explicit – reflect the effective nationalization of state politics in the years since *Citizens United*. The overwhelming majority of anti-worker legislative initiatives noted in this article were crafted with the aid of corporate lobbyists and promoted through ALEC in statehouses across the country. The bills supported by

ALEC, the Chamber of Commerce, AFP, NAM, and the NFIB are strikingly similar across a diverse range of states. Goals that are impossible to achieve in Congress are often feasible in the states; thus, the corporate lobbies have set out to reshape the national economy and labor market by moving a common agenda in 50 venues at once, based on the assessment that their political influence is more powerful at the state than the federal level of government.

Employer political mobilization is most concerned with the private sector

As mentioned above, we are highly skeptical of the notion that a state's laws governing public sector labor relations is a good proxy for what that state might do in the private sector in the absence of NLRA preemption. Our skepticism is underscored by the fact that some states that have a "Favorable" orientation toward public sector labor law also have RTW laws governing the private sector labor market. How could a state be progressive toward its public employees but hostile toward private sector unions? The answer to this discrepancy lies in understanding the interests of the corporate lobbies. The money behind ALEC, the Chamber of Commerce and the other dominant corporate lobbies comes from private sector corporations. By definition, they have a much stronger interest in preventing private sector organizing than in restricting the influence of public employees. The primacy of private sector labor regulations has long been evident at the federal level: while employer lobbies are unified in seeking cutbacks to public employees, their peak moments of political mobilization over the past fifty years have all revolved around private sector reforms: proposed NLRA reform under president Carter, Clinton's striker replacement bill, and the Employee Free Choice Act. Thus, in imagining what state legislation might emerge in response to lifting NLRA preemption, we must anticipate much more intensive employer political mobilization than what has been seen in debates over public sector regulation – including even the most contentious debates of the past decade.

The impact of employer mobility and multi-state employers

In the absence of NLRA preemption, unions in "favorable" states that operate in a national or regional (multi-state) market would be adversely affected by declining unionization in "unfavorable" states. In a national market, unions in favorable states will have a foothold in only part of the market and consumers can readily decide to avoid the somewhat higher-priced union-made goods or services. The employers can readily relocate production to avoid the union presence. In many ways, this is simply a heightened result paralleling what has happened to Northern and Midwestern-based unions as a consequence of the South

remaining, for the most part, relatively unorganized. The UAW, for instance, was able to blunt the move of the Big Three into southern production but has been unable to organize the foreign transplants that have been set up almost exclusively in the South. Increasingly uneven union density across states can also undercut the bargaining power in regional, multi-state firms such as utilities or telecommunications.

Unions in "favorable" states that operate in conventionally local product markets may also find that their bargaining power is challenged. As an illustration, consider supermarkets, and in particular the fact that there are national supermarket chains. A locally-based movement with strengthened bargaining rights (scope of bargaining, enhanced ability to organize) will have limited leverage against a chain. For example, a chain can take on a local strike by relying on its profits in other locations. Even if a local union has a strike fund provided by a national union this can pose a great challenge, particularly considering that unions in many locations of that chain will be substantially weaker as a result of the change in preemption. Further, competitors – considers Wal-Mart, Publix and Wegman's — can enter into better organized locations and undercut standards. These firms have scale to obtain low prices for the products they sell. They have substantial logistical capabilities and financial strength. Their entry will erode whatever the union standard is that is established in high-density areas, unless one believes that the improvements in labor law will facilitate the ready organization of these firms when they enter new regions. The prime example of this dynamic was the lowering of union standards in Southern California based on the fear that Wal-Mart would enter.

Potential for increasingly aggressive anti-worker legislation

One of the difficulties of projecting future labor law reform on the basis of existing statutes is that politics is not static – it is dynamic and ever-evolving. In our time and in unfavorable states, employer lobbies have been growing ever stronger, and their ambition to cripple labor unions has produced much more draconian legislative initiatives than what was imaginable even a decade ago.

For instance, so-called "paycheck protection" legislation has evolved in ever-more ambitious forms over the past decade. Both Arizona and Missouri move beyond traditional "paycheck protection" legislation (i.e., requiring that unions obtain prior approval from employees to spend dues money on behalf of political parties, political candidates, or other political advocacy) to create added reporting requirements that pose significant new financial threats to unions engaged in political activity. Under current state and federal law, unions must file annual reports showing what percentage of their expenses was devoted to political activities. Each year's report determines the percentage rebate that must be awarded in the following year to those who opt out of supporting their union's political agenda. By contrast, the new Arizona and Missouri laws require unions to determine *in advance*, and announce at the start of each year, how much they will spend on political activities in the coming year. This declaration in turn determines what share of dues is waived for non-supporters. It is easy to imagine how political events unforeseen at the

start of a year might end up requiring greater than anticipated resources, leaving unions facing untenable financial choices. The law thus puts unions in a no-win bind. If a union underestimates its political needs, it risks being unable to respond to potentially existential legislative threats. Yet to the extent a union cautiously overestimates its anticipated political budget, it forgoes that much greater a share of dues revenue.

Together with such high risk reporting requirements, labor opponents have also sought to broaden the definition of "political" activities subject to funding restrictions. Where the first generation of such bills aimed at a traditional understanding of union political activity – financial, advertising and field support for candidate or initiative campaigns – recent laws passed in Alabama, Arizona, Kansas and Missouri all aim at a broader scope of activity. Alabama's Act 761, for example, defines "political activity" to include "public opinion polling," "any form of political communication," "any type of political advertising," "phone calling for any political purpose," or "distributing political literature of any type."[25] For Alabama union members to make voluntary dues contributions through the payroll system, their unions would have to disavow any of these activities, conducted with any part of the organization's budget. Kansas' law similarly makes it illegal – even for employees who voluntarily choose to pay dues – to use electronic payroll deductions to process dues payments earmarked for "political purposes," broadly defined to include any "act done … in a way to influence or tend to influence, directly, or indirectly, any person … to vote for or against any candidate for public office."[26] The state Chamber of Commerce testified in support of the bill, with its director of legislative affairs explaining to lawmakers that "I need this bill passed so we can get rid of public sector unions."[27] Paul Kersey, longtime "labor expert" for the Heritage Foundation, ALEC, and multiple states' corporate-funded think tanks, declared the 2013 Kansas law a "good step" but rued that "it could have been stronger."[28]

Finally, Arizona's 2011 law — designated a "priority bill" by the state Chamber of Commerce — requires that both public and private sector unions get annual written authorization from each member before spending any amount of dues money for "political purposes," defined as "supporting or opposing any candidate … political party, referendum, initiative, [or] political issue advocacy." Thus at the same time that corporations are being freed to engage in ever more expensive political activity, unions are being restricted from engaging in activities that were legal even before *Citizens United*.

So too, the type of restrictions on bargaining created by Wisconsin's Act 10 were unprecedented when they were adopted in 2011. But elements of this legislation have now been adopted as corporate goals for private sector labor law reform. This evolution is most immediately evident at the federal level. During debate over the Employee Free Choice Act, the Republican and corporate-backed alternative was Rep. Charlie Norwood's Secret Ballot Protection Act, which mandated that unions could only be certified through an NLRB election.[29] In 2017, the primary labor law reform proposal supported by House Republicans is dramatically more ambitious. The Employee Rights Act, introduced in May 2017 with 81 co-sponsors, starts at the same place as the 2010 Norwood bill – requiring NLRB elections and making card-check recognition illegal – but adds a series of new items, including:[30]

- Union certification requires a "yes" vote by a majority of all employees in the bargaining unit. In other words, non-voters automatically become "no" voters.
- Requires that elections be held only after all legal questions and challenges have been heard and settled.
- Union must be re-certified by majority of the bargaining unit whenever there's been more than 50 percent turnover in the workforce since the previous certification election. These elections cannot be delayed because of employer ULP's.
- Employees may notify employer that they don't want their name or contact info provided to union, and will then be excluded from any *Excelsior* list.
- Provides liquidated damages for union-side ULP's. Unions found to have coerced employees filing decertification petitions are barred from filing objections in the decertification election.
- Non-members must be allowed to vote on contract ratification, strikes or other job actions.
- No dues money can be spent on non-representation activities (whether political, new organizing, charity, or anything else) without the annual written authorization of each member whose dues are being used.
- No strikes are legal except if approved by majority of all bargaining unit employees through secret ballot vote overseen by a private independent party chosen by agreement of employer and union and paid for entirely by the union.
- Removes NLRA protection from comprehensive campaigns and subjects unions to charges of "extortion." Proponents explain that "This would effectively criminalize many of the more aggressive union tactics that organizers use to unethically pressure employees into union membership against their will."[31]

Official corporate supporters of this bill include a virtual Who's Who of corporate lobbies: Americans for Prosperity, Americans for Tax Reform, Heritage Action, Club for Growth, FreedomWorks, National Taxpayers Union, American Conservative Union, ALEC, Freedom Partners Chamber of Commerce, Mackinac Center, Center for Worker Freedom, North Carolina Retail Merchants Association, and Wisconsin Manufacturers and Commerce. These same organizations have been active in state legislative fights across the country. We must expect, then, that this represents the agenda that these organizations would seek to implement in states where their legislative allies dominate the lawmaking process.

Finally, lifting NLRA preemption would create new and unique vulnerabilities for the construction industry. Construction is a key industry that is large, growing, cannot be offshored, and where skilled workers without college degrees can make a decent living. In 2016, there were 323,000 construction workers who were union members in RTW work states. Construction unions remain viable in RTW states due to the unique nature of their industry. While RTW mandates that non-members receive the same contractual benefits as dues-paying members, apprenticeship training programs and union hiring halls are not affected by this requirement. Union apprenticeship program typically provides the highest quality training and the most reliable path to becoming a journey-level worker. And when union signatory contractors need to hire workers for an upcoming project, they typically

turn to the union's hiring hall. Because both apprenticeship programs and hiring halls are reserved for union members, workers have strong reason to value the union and to remain dues-paying members. For this reason, construction unions have been uniquely positioned to maintain membership even in states that adopt RTW laws. In the absence of NLRA preemption, however, hostile state legislators would be free to dismantle these structures, thus undermining the viability of one of the few union sectors that remains relatively protected in RTW states.

The upside potential may be limited

The state categorizations used in the Freeman-based regression analysis reflect the favorability of the legal environment for public sector bargaining, since Freeman's empirical strategy rested on the assumption that states with unfavorable (favorable) public sector labor laws will enact equally unfavorable (favorable) laws in the private sector. We develop a third categorization (found in column (3) of Table A1), that includes information on changes in other areas of state labor and employment law that provide relevant information regarding the likelihood of favorable or unfavorable state-level private sector labor law reform in the absence of federal preemption.

We believe there are substantial barriers that limit the ability of even the most progressive state governments to adopt far-reaching pro-worker reforms. To assess the potential for progressive reform, we add a fourth category to Freeman's analysis, focusing on states that not only have "favorable" public sector labor regimes, but are also "actionable," i.e. states that unions could look to in hopes of progressive reforms in the absence of NLRA preemption. We determined the "Favorable and Actionable" set of states by first selecting those states where Democrats have controlled all three branches of government for at least the past four years (unfortunately, there are only six: California, Delaware, Hawaii, New York, Oregon, and Rhode Island) and adding to that list both Washington state and Massachusetts. We believe our list of "Favorable and Actionable" states is not too restrictive, particularly given that even these states have been limited in their ability to regulate the labor market in ways unions would like. For instance, in only two of these states – California and Hawaii – do farmworkers have collective bargaining rights equal to those of other private sector workers. Even New York's Democrats, for instance, have been unable to overcome the opposition of the agriculture lobby to extend organizing rights to this industry.[32] While most of these states have raised their minimum wage substantially above the federal minimum, tipped workers still make less than the normal minimum wage in Delaware, Hawaii, Massachusetts, New York, and Rhode Island – these most favorable of states remain unable to do away with the "tip credit" laws beloved by the restaurant industry. Of these eight states, only California, Massachusetts, Oregon, and Washington have established a right to paid sick leave, and only California and New York have established an effective mechanism for recovering stolen wages (though Massachusetts is close to passing one). In all these ways, then, we note that even in what appear to be the most favorable states for pro-union labor law reform, the actual potential for legislators to enact reforms is quite limited in the face of what we assume will be unprecedented opposition by private sector employers (more on this below).

Table 3

Number of private sector workers covered by union contracts using favorability rankings of the legal environment for private sector collective bargaining

	Favorable and Actionable	Favorable	Intermediate	Unfavorable	Total
Number (in millions)	3.2	0.3	0.8	4.1	8.5
Distribution	38%	4%	9%	49%	100.0%

Source: Authors' analysis of Current Population Survey Outgoing Rotation Group microdata, 12 months ending April 2017.

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Table 3 provides the breakdown of private sector union workers by this new state categorization. We find that 38 percent of private sector union workers are in states that are "Favorable and Actionable," i.e. states where there would be a likelihood of progressive reform, whereas nearly half (49 percent) are in "Unfavorable" states, where the likelihood of anti-union reform is high.

Table A3 in the appendix provides a further breakdown of Table 3 by race/ethnicity and gender. Figure B below shows the share of workers in "Favorable and Actionable" states and in "Unfavorable" states, by race/ethnicity and gender. Black non-Hispanic workers are less likely to be concentrated in "Favorable and Actionable" states and more likely to be concentrated in "Unfavorable" states than private sector union workers overall. This means the upsides of getting rid of NLRA preemption would be smaller, and the downsides would be greater, for black private sector union workers. That is also true of white non-Hispanic workers, who are even less concentrated in "Favorable and Actionable" states and more concentrated in "Unfavorable" states than black workers. The opposite is true of Hispanic and Asian/other workers, who are substantially more concentrated in "Favorable and Actionable" states and less concentrated in "Unfavorable" states.

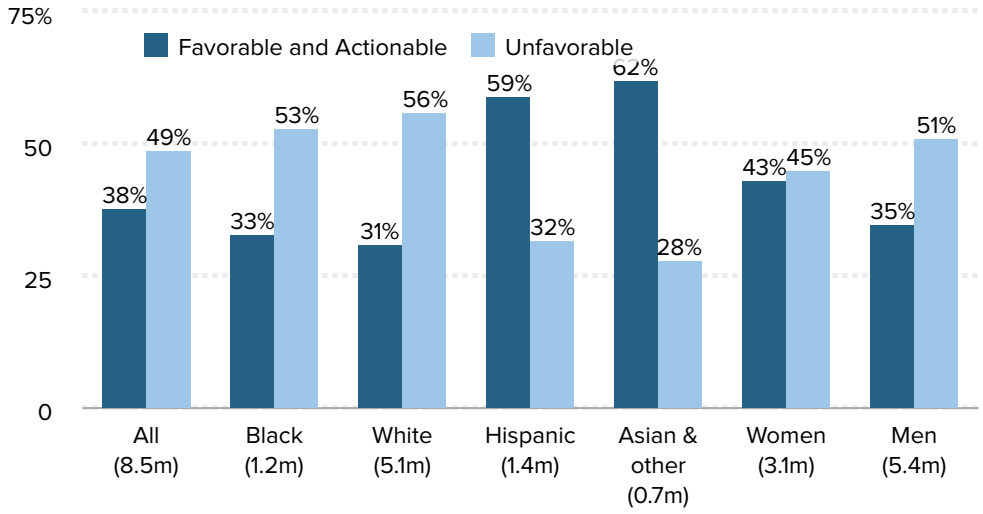
By gender, we find that female private sector union workers are somewhat more concentrated in "Favorable and Actionable" and somewhat less concentrated in "Unfavorable" states than their male counterparts.

Incremental Growth and Existential Threats

Finally, it is critical to account for the dynamic differences between pro- and anti-union labor law reforms. Essentially, pro-union reforms in recent years typically usher in a period of significant but incremental growth, while anti-union laws often pose immediate and near-existential threats to the labor movement. Thus, in states that have provided for card-check recognition, or in NLRB elections conducted under the most recent Obama-era

Figure B

Share of private sector union workers in "Favorable" and "Unfavorable" states, by demographic group



Source: Authors' analysis of Current Population Survey Outgoing Rotation Group microdata, 12 months ending April 2017.

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administrative reforms, workers' ability to organize was improved to a modest degree. Over a sustained number of years, such changes would effect very significant improvements – but progress is incremental. By comparison, in the six years since Wisconsin's Act 10, one of that state's largest public employee unions saw its membership fall from 70,000 to 10,000, forcing a cutback from 130 staff to just 15.[33] Such institutional setbacks not only hinder the union's ability to service its current members, but also its ability to grow. Even if Wisconsin's labor law were restored to its 2010 status, it would likely take many years before unions could organize their way back to previous membership levels. Thus, if anti-union officials control a state government even for only a few legislative cycles, they may undermine the labor movement's organizational capacity in ways that take decades to repair. Such dangers must be accounted for in our weighing the costs and benefits of waiving NLRA preemption.

Conclusion

This analysis points to the need for a huge amount of realism in thinking about opportunities and risks in waiving NLRA preemption. We estimate that around 4.1 million private sector union workers live in states where the political environment is ripe for the adoption of anti-union legislation ("Unfavorable" states), whereas 3.2 million private sector union workers live in states where the environment is ripe for the adoption of progress labor reforms ("Favorable and Actionable" states). The following examples provide a broad sense of how these groups might be affected. In the absence of NLRA preemption, if the anti-labor reforms in "Unfavorable" states were to reduce union coverage in those states

Table 4

Increases in coverage in "Favorable and Actionable" states needed to offset losses in "Unfavorable" states

	Current Private Sector Union Coverage	Private sector union coverage needed to make up for a 50% coverage drop in "Unfavorable" states	Private sector union coverage needed to make up for a 75% coverage drop in "Unfavorable" states	Private sector union coverage needed to make up for a 100% coverage drop in "Unfavorable" states
Total "Favorable and Actionable"	11.4%	18.6%	22.3%	25.9%
California	9.9%	16.2%	19.4%	22.5%
Delaware	8.1%	13.3%	15.9%	18.5%
Hawaii	14.8%	24.4%	29.1%	33.9%
Massachusetts	6.3%	10.3%	12.3%	14.4%
New York	16.6%	27.2%	32.5%	37.8%
Oregon	9.9%	16.3%	19.5%	22.6%
Rhode Island	9.3%	15.2%	18.2%	21.1%
Washington	11.7%	19.2%	22.9%	26.7%

Source: Authors' analysis of Current Population Survey Outgoing Rotation Group microdata, 12 months ending April 2017.

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by 50 percent (in our view a highly conservative assumption based on the above discussion), that would imply that the pro-union reforms in "Favorable and Actionable" states would have to increase coverage in those states by roughly two-thirds in order to have union coverage at the national level break even. If the anti-labor reforms in "Unfavorable" states were to reduce union coverage in those states by 75 percent, that would imply that the pro-union reforms in "Favorable and Actionable" states would have to nearly double coverage in those states in order to have union coverage at the national level break even. Finally, if private sector unions in "Unfavorable" states were completely eviscerated, pro-union reforms in "Favorable and Actionable" states would have to increase coverage in those states by roughly 130 percent in order to break even. The below table shows what these "required" increases would mean in terms of private sector union coverage in "Favorable and Actionable" states.

In light of these numbers, a key question becomes whether or not progressive state governments would be able to adopt pro-union reforms that are far-reaching enough to achieve increases at that scale. Above, we point out some cause for concern in that even very progressive states have been limited in their ability to regulate the labor market in pro-worker ways (for example, even New York's Democrats have been unable to overcome the opposition of the agriculture lobby to extend organizing rights to this industry).

Another question that is beyond the scope of this paper is what the economic, political, and human implications would be of a dramatic increase in the existing polarization of the U.S. into a few states where workers have strong rights and protections and a wide swath of the country where they do not.

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Appendix

Table V

Various categorizations of legal environment for collective bargaining, union coverage rates, and "right to work" status

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
State	**Favorability of legal environment for public sector bargaining, 1996**	**Favorability of legal environment for public sector bargaining, 2017**	**Favorability of legal environment for private sector bargaining, 2017**	**Union coverage rate, private sector**	**Union coverage rate, public sector**	**"Right to work" (1 = RTW; 0 = not RTW)**	**Union coverage level, private sector**
Alabama	Unfavorable	Unfavorable	Unfavorable	6.0%	25.2%	1	93,586
Alaska	Favorable	Favorable	Intermediate	10.3%	47.5%	0	22,582
	Explanation of difference between 1996 and 2017 in Alaska: The city of Anchorage passed a 2013 ordinance sharply restricting the scope of bargaining and eliminating public employee's right to strike, though this law was subsequently overturned by voter referendum.						
Arizona	Intermediate	Intermediate	Unfavorable	2.7%	21.7%	1	64,502
	Explanation of difference between 1996 and 2017 in Arizona: A "right to work" state which cut pension benefits; abolished civil service; outlawed project labor agreements; and adopted a "paycheck protection" law, though this was vetoed by the governor.						
Arkansas	Unfavorable	Unfavorable	Unfavorable	4.1%	11.5%	1	40,394
California	Favorable	Favorable	Favorable and Actionable	9.9%	56.8%	0	1,327,964
	Explanation of difference between 1996 and 2017 in California: Democrats have controlled all three branches of government for at least the past four years.						
Colorado	Unfavorable	Unfavorable	Unfavorable	6.9%	29.0%	0	143,693
Connecticut	Favorable	Favorable	Favorable	10.1%	70.8%	0	138,421
Delaware	Favorable	Favorable	Favorable and Actionable	8.1%	43.5%	0	28,534
	Explanation of difference between 1996 and 2017 in Delaware: Democrats have controlled all three branches of government for at least the past four years.						
Florida	Favorable	Intermediate	Unfavorable	3.3%	27.6%	1	239,146
	Explanation of difference between 1996 and 2017 in Florida: A right-to-work state which since 2011 has passed laws cutting public employee pension benefits, undermining seniority and tenure rights for school teachers and funding the growth of non-union charter and voucher schools, and whose House of Representatives in 2017 adopted a bill that would automatically decertify any public sector union whose dues-paying membership falls below 50% of the bargaining unit.						
Georgia	Unfavorable	Unfavorable	Unfavorable	3.7%	13.1%	1	134,773
Hawaii	Favorable	Favorable	Favorable and Actionable	14.8%	47.3%	0	71,237

Table A1 (cont.)

State	(1) Favorability of legal environment for public sector bargaining, 1996	(2) Favorability of legal environment for public sector bargaining, 2017	(3) Favorability of legal environment for private sector bargaining, 2017	(4) Union coverage rate, private sector	(5) Union coverage rate, public sector	(6) "Right to work" (1 = RTW; 0 = not RTW)	(7) Union coverage level, private sector
	Explanation of difference between 1996 and 2017 in Hawaii: Democrats have controlled all three branches of government for at least the past four years						
Idaho	Unfavorable	Unfavorable	Unfavorable	4.0%	18.7%	1	23,839
Illinois	Favorable	Intermediate	Intermediate	10.2%	52.6%	0	499,710
	Explanation of difference between 1996 and 2017 in Illinois: Democratic legislators adopted 2011 legislation restricting the scope of bargaining and the right to strike for Chicago school teachers.						
Indiana	Intermediate	Unfavorable	Unfavorable	8.1%	33.5%	1	212,840
	Explanation of difference between 1996 and 2017 in Indiana: Outlawed public sector collective bargaining; preempted local minimum wage increases; adopted "right to work" and eliminated prevailing wage rights.						
Iowa	Favorable	Favorable	Unfavorable	5.6%	33.8%	1	68,819
	Explanation of difference between 1996 and 2017 in Iowa: Exacted legislation in 2017 similar to Wisconsin's Act 10 (note, our data only go through April 2017, so we are not including this change in the middle column, since that column should reflect state of the laws when the data were collected).						
Kansas	Intermediate	Intermediate	Unfavorable	6.5%	26.6%	1	68,577
	Explanation of difference between 1996 and 2017 in Kansas: Restricted the scope of bargaining for school teachers and funded non-union voucher schools; eliminated both prevailing wage rights and project labor agreements; and adopted an aggressive "paycheck protection" statute.						
Kentucky	Unfavorable	Unfavorable	Unfavorable	11.4%	23.8%	1	169,990
Louisiana	Unfavorable	Unfavorable	Unfavorable	3.1%	16.9%	1	45,052
Maine	Favorable	Intermediate	Intermediate	5.6%	60.0%	0	27,191
	Explanation of difference between 1996 and 2017 in Maine: Abolished collective bargaining rights for childcare workers and farmworkers, cut pension benefits and imposed a multi-year wage freeze for public employees.						
Maryland	Favorable	Favorable	Favorable	6.8%	33.1%	0	143,040
Massachusetts	Favorable	Favorable	Favorable and Actionable	6.3%	53.3%	0	176,949
Michigan	Favorable	Intermediate	Unfavorable	11.3%	49.9%	1	415,432
	Explanation of difference between 1996 and 2017 in Michigan: Abolished fair-share in both the public and private sector, prohibited payroll deduction of union dues, cut healthcare and retiree benefits, outlawed project labor agreements, restricted teachers' scope of bargaining,						

Table A1 (cont.)

State	(1) Favorability of legal environment for public sector bargaining, 1996	(2) Favorability of legal environment for public sector bargaining, 2017	(3) Favorability of legal environment for private sector bargaining, 2017	(4) Union coverage rate, private sector	(5) Union coverage rate, public sector	(6) "Right to work" (1 = RTW; 0 = not RTW)	(7) Union coverage level, private sector
	abolished collective bargaining rights for graduate researchers and prohibited cities and counties from adopting any labor standards more progressive than state law.						
Minnesota	Favorable	Favorable	Intermediate	9.2%	49.0%	0	200,736
	Explanation of difference between 1996 and 2017 in Minnesota: Legislature voted to freeze public employee pay and to restrict the scope of bargaining and eliminate the right to strike of school teachers, though both statutes were vetoed by the governor.						
Mississippi	Unfavorable	Unfavorable	Unfavorable	6.1%	14.2%	1	53,889
Missouri	Intermediate	Intermediate	Unfavorable	7.6%	24.4%	1	177,092
	Explanation of difference between 1996 and 2017 in Missouri: Eliminated prevailing wage rights and adopted both a "right to work" and a "paycheck protection" law.						
Montana	Favorable	Favorable	Intermediate	7.5%	38.6%	0	24,829
	Explanation of difference between 1996 and 2017 in Montana: Cut pension benefits and whose legislators voted to abolish defined benefit pensions for school teachers, though this law was vetoed by the governor.						
Nebraska	Favorable	Favorable	Unfavorable	4.6%	36.2%	1	33,505
	Explanation of difference between 1996 and 2017 in Nebraska: A "right to work" state. In 2011 passed a law that changes the way contract disputes are settled under the state's labor commission, in ways that favor the employer. So that was a downgrading of public sector collective bargaining rights, but relatively mild compared to places like Wisconsin.						
Nevada	Unfavorable	Unfavorable	Unfavorable	10.4%	36.3%	1	111,305
New Hampshire	Favorable	Intermediate	Unfavorable	4.3%	54.0%	0	24,483
	Explanation of difference between 1996 and 2017 in New Hampshire: Took away the right to card-check recognition for public employees, abolished the state minimum wage, undermined teacher seniority and tenure protections, and both legislative chambers adopted a 2011 "right to work" law, though this was ultimately vetoed by the governor.						
New Jersey	Favorable	Intermediate	Unfavorable	8.3%	59.5%	0	273,716
	Explanation of difference between 1996 and 2017 in New Jersey: Cut pension benefits, restricted the scope of arbitration for uniformed services, undermined teachers' tenure and seniority protections, and instituted a four-year ban on healthcare bargaining.						
New Mexico	Favorable	Favorable	Favorable	3.4%	22.9%	0	20,173
	Explanation of difference between 1996 and 2017 in New Mexico:						
New York	Favorable	Favorable	Favorable and Actionable	16.6%	70.4%	0	1,140,638

Table A1 (cont.)

State	(1) Favorability of legal environment for public sector bargaining, 1996	(2) Favorability of legal environment for public sector bargaining, 2017	(3) Favorability of legal environment for private sector bargaining, 2017	(4) Union coverage rate, private sector	(5) Union coverage rate, public sector	(6) "Right to work" (1 = RTW; 0 = not RTW)	(7) Union coverage level, private sector
	Explanation of difference between 1996 and 2017 in New York: Democrats have controlled all three branches of government for at least the past four years.						
North Carolina	Unfavorable	Unfavorable	Unfavorable	2.6%	14.2%	1	94,559
North Dakota	Unfavorable	Unfavorable	Unfavorable	4.3%	18.3%	1	12,826
Ohio	Favorable	Favorable	Unfavorable	8.8%	47.4%	0	383,424
	Explanation of difference between 1996 and 2017 in Ohio: Passed an Act 10-copycat bill in 2011, SB5. SB5 was subsequently overturned by referendum, but its adoption by the state's legislature and Governor indicate a hostile environment for labor law reform.						
Oklahoma	Unfavorable	Unfavorable	Unfavorable	3.7%	18.9%	1	43,786
Oregon	Favorable	Favorable	Favorable and Actionable	9.9%	57.3%	0	147,066
	Explanation of difference between 1996 and 2017 in Oregon: Democrats have controlled all three branches of government for at least the past four years.						
Pennsylvania	Favorable	Intermediate	Unfavorable	7.9%	54.5%	0	396,970
	Explanation of difference between 1996 and 2017 in Pennsylvania: Abolished prevailing wage rights on projects under $100,000 and created an "emergency fiscal manager" with the authority to void union contracts in the city of Harrisburg						
Rhode Island	Favorable	Favorable	Favorable and Actionable	9.3%	67.1%	0	39,214
	Explanation of difference between 1996 and 2017 in Rhode Island: Democrats have controlled all three branches of government for at least the past four years.						
South Carolina	Unfavorable	Unfavorable	Unfavorable	2.1%	8.6%	1	35,372
South Dakota	Favorable	Favorable	Unfavorable	3.6%	24.3%	1	11,507
	Explanation of difference between 1996 and 2017 in South Dakota: A "right to work" state which prohibited project labor agreements, created a new youth subminimum wage and entirely exempted its summer tourism industry from the state minimum wage, and abolished teacher tenure, though this last measure was subsequently overturned by voter referendum.						
Tennessee	Unfavorable	Unfavorable	Unfavorable	4.0%	18.8%	1	92,148
Texas	Unfavorable	Unfavorable	Unfavorable	3.2%	19.0%	1	317,703
Utah	Unfavorable	Unfavorable	Unfavorable	3.0%	20.2%	1	34,186
Vermont	Favorable	Favorable	Favorable	6.0%	52.3%	0	14,908
Virginia	Unfavorable	Unfavorable	Unfavorable	4.0%	16.7%	1	119,994

Table A1 (cont.)

State	(1) Favorability of legal environment for public sector bargaining, 1996	(2) Favorability of legal environment for public sector bargaining, 2017	(3) Favorability of legal environment for private sector bargaining, 2017	(4) Union coverage rate, private sector	(5) Union coverage rate, public sector	(6) "Right to work" (1 = RTW; 0 = not RTW)	(7) Union coverage level, private sector
Washington	Favorable	Favorable	Favorable and Actionable	11.7%	58.9%	0	303,980
West Virginia	Intermediate	Intermediate	Unfavorable	9.1%	27.9%	1	50,549
	Explanation of difference between 1996 and 2017 in West Virginia: Prohibited Project Labor Agreements and adopted a "right to work" law.						
Wisconsin	Favorable	Unfavorable	Unfavorable	6.5%	27.7%	1	153,273
	Explanation of difference between 1996 and 2017 in Wisconsin: With the passage of Act 10 in 2011, has become one of the single bleakest legal environments for public employee unions.						
Wyoming	Unfavorable	Unfavorable	Unfavorable	4.5%	12.3%	1	8,343

Source: Freeman (2006) "Will Labor Fare Better Under State Labor Relations Law?" Based on 1996 update by Kim Rueben of the NBER Valletta-Freeman state public sector labor law data set (http://www.nber.org/publaw/)

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Table A2

Regression results

	(1)	(2)	(3)	(4)
	Public sector coverage (ln)	**Public sector coverage (ln)**	**Public sector coverage (ln)**	**Public sector coverage (ln)**
Favorable state dummy (Freeman)	0.547***	0.261**		
	(0.155)	(0.129)		
Unfavorable state dummy (Freeman)	-0.410**	-0.269**		
	(0.161)	(0.115)		
Favorable state dummy (Update)			0.165	-0.0751
			(0.137)	(0.097)
Unfavorable state dummy (Update)			-0.735***	-0.431***
			(0.136)	(0.098)
Private sector coverage (ln)		0.423***		0.456***
		(0.079)		(0.083)
RTW dummy		-0.275***		-0.375***
		(0.099)		(0.101)
Constant	3.279***	2.774***	3.659***	3.016***
	(0.142)	(0.225)	(0.109)	(0.193)
Observations	50	50	50	50
R-squared	0.678	0.854	0.584	0.829

Note: OLS regression of public sector union coverage rates on dummy variables for whether the state has public sector laws that were either "Favorable" or "Unfavorable." Omitted category is "Intermediate." Some models control for private sector union coverage rates and for whether the state has a RTW law. Union coverage rates are in ln form. Standard errors in parentheses. ***p<.01, **p<.05, *p<.01.

Source: Authors' analysis of Current Population Survey Outgoing Rotation Group microdata, 12 months ending April 2017.

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Table A3

Number of private sector workers covered by union contracts using favorability rankings of the legal environment for private sector collective bargaining

	Favorable and Actionable	Favorable	Intermediate	Unfavorable	Total
All	3,235,580	316,542	775,048	4,149,268	8,476,438
Black Nonhispanic	410,567	79,713	100,079	655,532	1,245,890
White Nonhispanic	1,576,559	174,256	537,180	2,854,944	5,142,939
Hispanic any race	828,083	39,400	94,120	446,848	1,408,451
Asian and other	420,371	23,173	43,670	191,944	679,157
Women	1,339,378	125,840	252,845	1,400,676	3,118,739
Men	1,896,202	190,702	522,203	2,748,592	5,357,699
Distribution across state categories					
All	38%	4%	9%	49%	100.0%
Black Nonhispanic	33%	6%	8%	53%	100.0%
White Nonhispanic	31%	3%	10%	56%	100.0%
Hispanic any race	59%	3%	7%	32%	100.0%
Asian and other	62%	3%	6%	28%	100.0%
Women	43%	4%	8%	45%	100.0%
Men	35%	4%	10%	51%	100.0%

Source: Authors' analysis of Current Population Survey Outgoing Rotation Group microdata, 12 months ending April 2017.

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Endnotes

1. Modern campaign finance rules were first adopted in 1974. Since then, the real cost of Congressional campaigns has increased four-fold, fueled by the rise first of television and later of consultants, polling, digital media and ever-sophisticated data analysis. The cost of presidential election campaigns doubled between 2000 and 2008, and then doubled again in 2012. Center on Responsive Politics, https://www.opensecrets.org/pres12. The dominant role of money is further visible in how candidates spend their time: during the course of his reelection campaign, president Obama's schedule included twice as many fundraising as public speaking events. Nicholas Confessore, "Result Won't Limit Campaign Money Any More Than Ruling Did," *New York Times*, November 11, 2012, www.nytimes.com/2012/11/12/us/politics/a-vote-for-unilmited-campaign-financing.html?_r=o. Once elected, Congresspeople commonly report that they spend one-third of their hours fundraising for their next campaign.

2. Federal elections from 2000-2014. (Center for Responsive Politics 2015)

3. Liz Kennedy and Sean McElwee, *Do Corporations & Unions Face the Same Rules on Political Spending?* Demos, 2014, http://www.demos.org/sites/default/files/publications/CorpExplainer.pdf.

4. Quoted in Jane Mayer, *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right*, Doubleday, New York, 2016.

5. Mayer 2016, p. 7.

6. Kenneth Vogel, "A Koch love-fest in California," *Politico*, August 3, 2015. http://www.politico.com/story/2015/08/koch-love-fest-in-california-120928; Nicholas Confessore, "Koch Brothers' Budget of $889 Million is On Par With Both Parties' Spending," *New York Times*, January 26, 2015. http://www.nytimes.com/2015/01/27/us/politics/kochs-plan-to-spend-900-million-on-2016-campaign.html.

7. Quoted in Mayer 2016, p. 378.

8. In 2006, just 2 percent of outside political spending came from undisclosed donors; by 2010 this figure jumped to 40 percent, representing hundreds of millions of dollars in secret spending. Mayer, Dark Money, 248.

9. "Advocacy" organizations here denotes independent expenditures by groups other than candidate campaigns or political parties.

10. Data is from FEC, compiled by Center on Responsive Politics, https://www.opensecrets.org/outsidespending/index.php?type=Y.

11. Over 100 corporations and nearly 20 nonprofit groups have resigned their membership in ALEC since 2011. Following the murder of Trayvon Martin—broadly perceived as, in part, the result of ALEC-promoted "Stand Your Ground" laws—public outcry led to a rash of corporate resignations, including both Wal-Mart and Coca-Cola (see Center for Media and Democracy, "Corporations That Have Cut Ties to ALEC," http://www.sourcewatch.org/index.php/Corporations_that_Have_Cut_Ties_to_ALEC). These corporations are noted as ALEC supporters in this book for several reasons. First, they were active ALEC supporters during the period that most of the bills discussed in this report were formulated and initially promoted. Second, although these companies distanced themselves from ALEC due to the controversy surrounding the Martin

killing or ALEC's position on immigration or climate change, they in no way distanced themselves from ALEC's economic or labor agenda, and it is possible that these companies will either renew ties with ALEC in the future, or find parallel channels through which to promote the same policy goals. In some cases, these interests may already be supporting ALEC's activities through other channels. For instance, while Wal-Mart resigned from ALEC, the Walton Family Foundation remains an active member. So too, many of the companies that resigned ALEC membership are members of the U.S. Chamber of Commerce, which in turn is an active supporter of ALEC. It is possible that some corporations may shield themselves from public criticism by resigning direct ALEC membership, but continue to support the organization's activities with funds channeled through the Chamber of Commerce or the many other trade associations that remain active ALEC members.

12. American Legislative Exchange Council, "ALEC 101," . Undated, http://alecexposed.org/w/images/5/5b/ALEC_101_Exposed_1.pdf.

13. For a 2011 database of ALEC affiliated corporations that have donated to the campaigns of ALEC-affiliated legislators, see ProPublica, *ALEC-Related Contributions*, August 2011. http://projects.propublica.org/alec-contributions.

14. Fang, *The Machine,* 202.

15. Common Cause, *Legislating Under the Influence: Money, Power and the American Legislative Exchange Council*, June 24, 2011, http://cldc.org/wp-content/uploads/2011/12/MONEYPOWERANDALEC.pdf. The discrepancy between this number and ALEC's claim of 20 percent success may reflect the difficulty that outsiders face in tracing ALEC's full impact, as ALEC-affiliated lawmakers may put forth bills that accomplish the organization's aims without mirroring its exact model language.

16. Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America* (Princeton: Princeton University Press, 2010), 173.

17. Center for the Study of Democratic Institutions, *Vanderbilt Poll*, May 2012, http://www.vanderbilt.edu/csdi/tl2012.pdf; American National Election Studies, *Evaluations of Government and Society Study*, 2010, http://www.electionstudies.org/studypages/2010_2012EGSS/2010_2012EGSScriteria.htm.

18. Steven Rogers, "Accountability in State Legislatures: How Parties Perform in Office and State Legislative Elections," Center for the Study of Democratic Institutions, Vanderbilt University, October 17, 2013, http://www.stevenmrogers.com/Dissertation/ChapterDrafts/CollectiveAccountability/Rogers-CollectiveAccountability.pdf.

19. Tilman Klumpp, Hugo Mialon and Michael Williams, "The Business of American Democracy: Citizens United, Spending, and Elections," July. 2014. The authors culled data from over 38,000 state legislative races over seven election cycles – five preceding Citizens United and two following the decision. The analysis compared the impact of the Supreme Court decision in states that had previously allowed corporate independent expenditures with those that had banned them before 2010. This differences-in-differences analysis provides the first rigorous statistical measure of the law's impact on state legislative elections. The data show that independent expenditures increased the likelihood of Republican incumbents seeking reelection, decreased the number of Democrats choosing to stand as candidates, and increased the odds of the Republican candidate winning.

20. Chris Kromm, "How much did Art Pope's network really spend on North Carolina's 2010

legislative election?" October 7, 2011, http://www.artpopeexposed.com/explainer_how_much_did_art_pope_really_spend.

For a detailed account of Pope's political activities, see Mayer 2011.

21. Author's calculations based on Kromm 2011 and National Institute on Money in State Politics, overview of North Carolina 2008 election. https://www.followthemoney.org/election-overview?s=NC&y=2008.

22. Author's calculations based on National Institute on Money in State Politics, overview of North Carolina 2008 election. https://www.followthemoney.org/election-overview?s=NC&y=2008.

23. Competitiveness in state legislative races – measured by the share of all races decided by 5 percent or less – has been declining since the 1970s. 2014 saw the fewest closely contested races of any state election on record. Reid Wilson, "Study: elections becoming less competitive," *Washington Post*, May 7, 2015. https://www.washingtonpost.com/blogs/govbeat/wp/2015/05/07/study-state-elections-becoming-less-competitive.

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26. Kansas State Legislature, House Bill No. 2023, 2013a, http://kslegislature.org/li_2014/b2013_14/measures/documents/hb2023_00_0000.pdf.

27. John Celock, "Kansas Chamber of Commerce Lobbyist: Bill Is Needed to End Public Sector Unions," Huffington Post, January 23, 2013, www.huffingtonpost.com/2013/01/23/kansas-chamber-of-commerce_n_2536360.html.

28. In 2013, Paul Kersey was Labor Policy Director for the Illinois Policy Institute, a member of the ALEC-affiliated State Policy Network. Kersey previously served in a similar role for the Mackinac Center in Michigan, and before that at the Heritage Foundation. Kersey presented several pieces of model anti-union legislation at ALEC's Spring 2012 Task Force Summit.

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30. HR 2723, The Employee Rights Act, May 25, 2017. https://www.congress.gov/bill/115th-congress/house-bill/2723.

31. http://employeerightsact.com.

32. www.usnews.com/topics/locations/new_york.

33. Personal communication from Wisconsin union officials.