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Right to Work Laws: Legislative Background and Empirical Research

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Congressional Research Service

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Right to Work Laws: Legislative Background and Empirical Research

Abstract

[Excerpt] Since the NLRA was amended by the Taft-Hartley Act in 1947, individual states have had the option of enacting laws that prohibit union security agreements. These state laws supersede the union security provisions of the NLRA and are known as right to work (RTW) laws. As of this writing, 23 states have enacted RTW laws.

This report is divided into two parts. The first part discusses RTW laws themselves. It provides a brief legislative history on the federal role in the regulation of unions, a summary of the origin and development of RTW laws, a discussion of recent events at the state level, and federal legislation related to RTW. The second part of the report reviews the varied empirical research on the effects of RTW laws. Specifically, it will discuss the mixed evidence indicating relationships between RTW laws and other economic outcomes.

Keywords

right to work, legislation, union security agreements, labor organizations

Comments

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Right to Work Laws: Legislative Background and Empirical Research

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Summary

The National Labor Relations Act (NLRA) establishes most private-sector workers' rights to unionize and collectively bargain over wages, benefits, and working conditions. Enacted in 1935, the NLRA also permits collective bargaining contracts between employers and labor organizations that require every individual covered by the collective bargaining contract to pay dues to the negotiating labor organization. These contract provisions are known as union security agreements. Since the NLRA was amended by the Taft-Hartley Act in 1947, individual states have been permitted to supersede the union security provisions of the NLRA by enacting laws that prohibit union security agreements. These state laws are known as right to work (RTW) laws.

Currently, 23 states have RTW laws. Of these, 12 states passed RTW laws prior to 1950 and another six passed them prior to 1960. The two most recent states to adopt RTW laws are Oklahoma (2001) and Indiana (2012). Several other state legislatures are debating RTW laws.

Recent legislative proposals, with substantial numbers of cosponsors, would expand RTW policies nationwide. Advocates of national RTW laws claim that they would enhance personal freedom and employer flexibility. Opponents argue that such laws would weaken workers' abilities to collectively bargain for more favorable compensation and working conditions. Proposals aiming to expand RTW policies typically strike the provisions of the NLRA that permit union security agreements.

National RTW proposals are often discussed in the context of the economic performance of states that have adopted them. However, research that compares outcomes in RTW and union security states is inconclusive. The recent data trends between RTW and union security states are relatively distinct, but the influence of RTW laws in these trends (if any) is unclear.

- Unionization rates in RTW states are less than half of what they are in union security states. It is ambiguous what portion of this difference is attributable to RTW laws and what portion is due to diverse preferences among the states regarding unionization.
- In the past decade, aggregate employment in RTW states has increased modestly while employment in union security states has declined. It is unclear if this growth is attributable to RTW, other pro-business policies (which tend to be concentrated in RTW states), or other factors.
- Wages are lower in RTW states than union security states. Historical research has suggested that RTW laws have little influence on these differences. More contemporary scholarship has come to diverse conclusions, depending on the researchers' methodology.

Difficulties associated with rigorously studying the relationships between RTW laws and various outcomes are likely to continue to make it difficult to generate definitive findings about these relationships. As such, the ongoing debate on RTW may be driven by factors other than rigorous empirical evidence.

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Background

To promote commerce and deter labor unrest, Congress has established laws regulating unionization and collective bargaining (i.e., similar workers negotiating compensation and working conditions as a unit rather than individually). The primary federal legislation that regulates private sector collective bargaining is the National Labor Relations Act (NLRA), enacted in 1935. In addition to establishing workers' rights to organize and establishing union election procedures, the NLRA also permits collective bargaining contracts between employers and labor organizations that require all workers covered by the contract to pay dues to the negotiating organization. These contract provisions are known as *union security agreements*.¹

Since the NLRA was amended by the Taft-Hartley Act in 1947, individual states have had the option of enacting laws that prohibit union security agreements. These state laws supersede the union security provisions of the NLRA and are known as *right to work* (RTW) laws. As of this writing, 23 states have enacted RTW laws.

Since the Taft-Hartley Act, changes to federal law relating to unionization and RTW have been limited. Debate on this topic, however, has been ongoing and there have been legislative proposals to both expand and prohibit RTW laws. Supporters of expanding RTW laws claim that they will increase personal freedom and employer flexibility. Conversely, supporters of proposals to eliminate RTW laws emphasize that unions must negotiate on behalf of all workers in the unit, and as such, it is appropriate that all workers pay for that for representation.

This report is divided into two parts. The first part discusses RTW laws themselves. It provides a brief legislative history on the federal role in the regulation of unions, a summary of the origin and development of RTW laws, a discussion of recent events at the state level, and federal legislation related to RTW. The second part of the report reviews the varied empirical research on the effects of RTW laws. Specifically, it will discuss the mixed evidence indicating relationships between RTW laws and other economic outcomes.

Legislative History

Prior to the passage of the federal labor laws discussed in this report, the regulation of labor and collective bargaining was left to the states. Laws varied, but most states adopted policies of open competition with minimal governmental regulations.²

In 1926, the Railway Labor Act was the first federal law to guarantee collective bargaining rights to a group of workers. The Norris-LaGuardia Act, passed in 1932, prohibited federal courts from issuing an injunction in any labor dispute. Previously, judges could end a strike if they did not approve of its methods or objectives. The Norris-LaGuardia Act, however, did not guarantee

¹ See 29 U.S.C. 158(a)(3). Specifically, the NLRA states that contracts with union security agreements may require all covered workers to be members of the negotiating labor organization within 30 days of beginning employment. The courts have interpreted union membership to be equivalent to paying union dues. This distinction is outlined in greater detail in the "Union Security Agreements and Required Union Dues" section of this report.

² Bruce Feldracker, *Labor Guide to Labor Law*, 4th ed. (2000), pp. 1-3.

collective bargaining rights; it merely regulated employer-union relations once they were established.

National Labor Relations Act³

Enacted in 1935, the NLRA governs labor-management relations and collective bargaining for most private sector workers.⁴ The NLRA is also known as the Wagner Act. Many provisions of the NLRA were contained in the National Industrial Recovery Act (NIRA), which was enacted in 1933 but found unconstitutional in 1935. The Supreme Court upheld the NLRA in 1937.

The NLRA found that the refusals of employers to collectively bargain with employees “lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce[.]”⁵ To remedy this issue, the NLRA guarantees workers the right to organize and bargain collectively over wages, hours, and conditions of employment. It also establishes procedures for the election and certification of unions and establishes certain unfair labor practices for employers that may discourage workers from unionizing. The NLRA is enforced by the National Labor Relations Board (NLRB), an independent federal agency.

The NLRA also permits collective bargaining contracts to contain union security agreements that require all workers covered under the contract to pay dues to the negotiating labor organization.

Taft-Hartley Act

Passed over a presidential veto in 1947, the Taft-Hartley Act (also known as the Labor Management Relations Act) substantially amended the NLRA. Many of the provisions in the Taft-Hartley Act, including the statement of purpose at the beginning, remain in current law.

Whereas the original Wagner Act focused on asserting the rights of workers and organized labor, the Taft-Hartley Act addresses employers, employees, and labor unions as equal parties in the negotiation process and states that “neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.” It supplemented existing unfair labor practices for employers by establishing unfair labor practices for unions. It also prohibited secondary strikes and outlawed so-called “closed shops” that required an employee to be a union member prior to being hired.

The Taft-Hartley amendments also established the RTW provisions that are still part of the NLRA. These provisions stated that individual states may pass laws prohibiting union security agreements in labor contracts and that these state laws would supersede the NLRA provisions authorizing union security agreements.⁶

³ For a detailed discussion of the NLRA and related laws, see CRS Report R42526, *Federal Labor Relations Statutes: An Overview*.

⁴ The NLRA, as amended, is at 29 U.S.C. 141-197. It does not cover private sector workers employed by railroads or airlines; these workers are covered by the aforementioned Railway Labor Act.

⁵ See P.L. 74-198, Section 1.

⁶ See 29 U.S.C. 164(b). The RTW provisions of the NLRA are also sometimes referred to as 14(b) provisions, after the section of the NLRA that permits RTW laws.

Legislation Since Taft-Hartley

Amendments to the NLRA since 1947 have been limited. In 1959, the Landrum-Griffin Act increased regulation of internal union activities and enumerated certain rights to all union members.⁷ Subsequent legislation in 1974 expanded the provisions of the NLRA to employees of private nonprofit hospitals, a population that had been excluded from coverage since the enactment of the Taft-Hartley Act.

In 1980, the NLRA was amended to permit individuals who were covered by a union security agreement but were members of a religion that objected to financially supporting a labor union to pay the equivalent of the union dues to a charitable organization.⁸ No major federal legislation related to the NLRA or RTW has been enacted since 1980, though there has been ongoing debate on the issue.

Union Security Agreements and Required Union Dues

In states without RTW laws, an elected union and an employer can agree to a collective bargaining contract that requires all workers covered by the contract to become members within 30 days.⁹ Workplaces covered by such an agreement are often called *union shops*.

In 1963, the Supreme Court ruled that, even in a union shop, an employee cannot be required to join a union pursuant to a union security agreement. Instead, the employee may pay dues but decline to become a full union member.¹⁰ Dues-paying nonmembers are referred to as *financial core members*. In spite of their name, financial core members are not union members: they may not participate in union activities or even vote on the ratification of the collective bargaining contract that covers them. Financial core members are not subject to union bylaws or union discipline but they are subject to the rights and responsibilities in the collective bargaining contract with their employer.

Subsequent decisions have concluded that financial core members only need to pay dues to cover the cost of collective bargaining functions. These functions include bargaining, contract administration, and grievance adjustment. Financial core members do not have to financially support union functions that are unrelated to collective bargaining such as political activities. Workers subject to a union security agreement must be informed of the financial core membership option.¹¹

An alternative to the union shop is the *agency shop*. In an agency shop, workers covered by a collective bargaining contract are required to pay a fee for representation (an *agency fee*) but are not required to join the union. Since union shop agreements must permit covered workers to

⁷ See P.L. 86-257.

⁸ See P.L. 96-593.

⁹ Covered workers in the construction industry can be required to become union members within seven days, see 29 U.S.C. 158(f).

¹⁰ See *NLRB v. General Motors Corporation*, 373 U.S. 734 (1963).

¹¹ Bruce Feldacker, *Labor Guide to Labor Law*, Fourth ed. (2000), pp. 424-438.

forego union membership and only pay a representation fee, union shops and agency shops operate similarly in practice.

In cases where a union security agreement conflicts with a worker's religious beliefs, the objecting worker may donate the equivalent of the agency fee or financial core dues to a non-labor, non-religious charity.¹²

Union Security and Workers Not Covered by the NLRA

The collective bargaining rights of several groups of workers are covered by legislation other than the NLRA. Union security agreements among these groups are governed by other federal laws:

- Interstate railway and airline employees' collective bargaining rights are defined by the Railway Labor Act (RLA).¹³ The RLA permits union security agreements in all states, effectively superseding any local RTW laws.¹⁴
- Postal workers' collective bargaining rights are defined by the Postal Reorganization Act of 1970. The act specifies that dues will be deducted from an employee's pay only with the written authorization of that employee.¹⁵ This optional deduction applies in all states.
- Federal employees' collective bargaining rights are defined in the Federal Service Labor-Management Relations Statute (FSLMRS).¹⁶ It specifies that dues will only be deducted from an employee's pay upon written authorization from that employee.¹⁷ The FSLMRS applies equally in both RTW and union security states.

State Right to Work Laws

The Taft-Hartley amendments to the NLRA permit individual states to pass laws that prohibit union security agreements. **Table 1** lists the 23 states that have passed such laws. A state may pursue RTW through legislation, a ballot initiative, or an amendment to its state constitution.

¹² See 29 U.S.C. 169.

¹³ The RLA also applies to any company that is defined as a "carrier" by 45 USC 151, first paragraph. It also includes any company that is controlled by a railroad or airline.

¹⁴ See 45 U.S.C. 152, paragraph eleventh.

¹⁵ See 39 U.S.C. 1205.

¹⁶ The Government Accountability Office (GAO) is excluded from FSLMRS coverage, but the General Accounting Office Personnel Act of 1980 gave GAO employees the right to organize and bargain collectively.

¹⁷ See 5 U.S.C. 7115.

Table I. Right to Work States and Date of Enactment

| State | Year of Enactment | State | Year of Enactment |
|----------------|-------------------|----------------|-------------------|
| Florida | 1943 ^a | Nevada | 1951 |
| Arizona | 1947 | Alabama | 1953 |
| Arkansas | 1947 | Mississippi | 1954 |
| Georgia | 1947 | South Carolina | 1954 |
| Iowa | 1947 | Utah | 1955 |
| Nebraska | 1947 | Kansas | 1958 |
| North Carolina | 1947 | Wyoming | 1963 |
| North Dakota | 1947 | Louisiana | 1976 |
| South Dakota | 1947 | Idaho | 1985 |
| Tennessee | 1947 | Oklahoma | 2001 |
| Texas | 1947 ^b | Indiana | 2012 |
| Virginia | 1947 | | |

Source: U.S. Department of Labor, Wage and Hour Division, <http://www.dol.gov/whd/state/righttowork.htm>.

Note: Sources vary on date of enactment. The table reflects the source cited above as well as the recent enactment of RTW in Indiana.

- a. While it was originally enacted in 1943, the validity of Florida’s RTW law was unclear until the enactment of the Taft-Hartley Act.
- b. Texas originally passed RTW in 1947, though the law was modified to its current form in 1993.

The details of RTW laws vary by state. The law passed by Indiana in February 2012, for example, excluded employees of the state, employees of “a political subdivision,” and several other groups that are not covered by the NLRA.¹⁸ Conversely, the constitutional amendment passed in Oklahoma is broader and includes all workers in the state.

The breadth of some state laws that have attempted to regulate workers who are not covered by the NLRA has been challenged in the courts. For example, both a federal appeals court and the Oklahoma supreme court have determined that Oklahoma’s prohibition of union security agreements does not extend to workers covered by the Railway Labor Act.¹⁹

Recent Developments

Federal Legislation

While changes to federal law regarding unions and RTW have been limited in recent decades, debate has been robust and ongoing. Congress has considered a number of proposals that would amend the NLRA’s provisions regarding union security agreements. These proposals have ranged from striking the provisions that permit union security agreements (effectively making every state

¹⁸ See Section 1 of Indiana Code 22-6-6.

¹⁹ See *Local 514 Transport Workers Union v. Keating*, Oklahoma supreme court (2003) and 10th Circuit Court (2004).

an RTW state) to striking the provisions that allow individuals states to prohibit union security agreements (effectively invalidating existing RTW laws).

Since the 104th Congress, a National Right to Work bill has been introduced in the House during the first session of each Congress. Similar bills have regularly been introduced in the Senate during this time. These bills would amend the NLRA by striking the language that permits union security agreements and would make similar changes to the Railway Labor Act. Most national RTW proposals are relatively narrow in scope and only prohibit union security agreements. They typically do not address union election procedures or any other issues associated with collective bargaining. These National Right to Work proposals often have a substantial number of cosponsors.²⁰

Contrasting proposals that would strike the provisions of the NLRA that allow states to enact RTW laws have also been introduced in recent Congresses. These proposals have been introduced with much less regularity than National Right to Work proposals. These proposals typically forbid state RTW laws by striking the provisions of the NLRA that permit such laws.²¹

State Activities

As noted previously, Indiana is the most recent state to enact an RTW law. Since Indiana's enactment of its RTW law, several state legislatures, including those in Ohio, Michigan, and New Hampshire have debated RTW laws, but none have enacted one.

Empirical Evidence Relating to RTW

There has been a great deal of debate and research on the effects of RTW laws on states that adopt them. Most empirical research has concluded that RTW laws have a negative relationship with unionization rates (also known as union density) though the causal effect is debated. The effects of RTW laws on other economic outcomes, such as job growth and wages, have been studied, though findings have been mixed and there is no broad consensus on the magnitude (if any) of the effects of these laws.

Limitations on Measuring the Effects of RTW Laws

It is important to recognize that *there is no straightforward way to measure how RTW laws affect other outcomes*. It is possible to compare data from states with RTW laws to states without such laws, but since it is not possible to observe the counterfactual—what would have happened in each state if it had a differing union security policy—there is no simple way to tell what contribution an RTW law (or lack thereof) made to other outcomes in the state. For example, a researcher could compare employment growth in Arizona (an RTW state) and neighboring New Mexico (a union security state), but it would be impossible to identify what portion of the differences between the states was attributable to their respective union security laws and what

²⁰ For example, in the 112th Congress, H.R. 2040 had 77 cosponsors and S. 2173 had 19 cosponsors.

²¹ For example, see H.R. 2775 in the 112th Congress.

portions were attributable to differences in labor force characteristics, industry makeup, local taxation policies, and countless other state-specific characteristics.

While it is not possible to completely isolate the effect of RTW laws in dynamic and complex economies, some researchers have attempted to estimate the effect of RTW laws by controlling for other factors. Their techniques have varied and it comes as little surprise that diverse methodologies have yielded diverse conclusions.

The subsequent review of RTW-related studies does not attempt to be exhaustive. It does, however, attempt to cover frequently cited studies as well as more recent studies that attempt to isolate the effect of RTW laws on various outcomes.

Right to Work and Unionization

Table 2 shows the rate of union membership and the share of workers represented by a union in RTW and union security states. Two intuitive trends emerge. First, the union membership rate in union security states is nearly three times that of RTW states (15.8% vs. 5.7%). Second, the proportion of workers who are covered by a union contract but who are not members of the union is higher in RTW states than union security states. In RTW states, about 18% of the workers who are covered by a union contract are non-members (approximately 616,000 of 3.4 million). In union security states, this share is about 7% (about 910,000 of 12.8 million).

Table 2. Union Membership and Representation by Sector and in Right to Work and Union Security States, 2011

| | Employment (in thousands) | Union Members (in thousands) | % Union Members | Covered by Union Contract (in thousands) | % Covered by Union Contract |
|-----------------------|------------------------------|------------------------------------|--------------------|---|-----------------------------------|
| Total | 125,210 | 14,755 | 11.8% | 16,281 | 13.0% |
| RTW | 49,604 | 2,812 | 5.7% | 3,428 | 6.9% |
| Union Security | 75,606 | 11,943 | 15.8% | 12,853 | 17.0% |
| Private Sector | | | | | |
| Total | 104,778 | 7,204 | 6.9% | 7,972 | 7.6% |
| RTW | 41,182 | 1,350 | 3.3% | 1,602 | 3.9% |
| Union Security | 63,596 | 5,855 | 9.2% | 6,370 | 10.0% |
| Public Sector | | | | | |
| Total | 20,432 | 7,550 | 37.0% | 8,309 | 40.7% |
| RTW | 8,421 | 1,462 | 17.4% | 1,827 | 21.7% |
| Union Security | 12,010 | 6,088 | 50.7% | 6,482 | 54.0% |

Source: Current Population Survey. State-level data were disaggregated by sector by Barry Hirsch and David Macpherson and posted at <http://www.unionstats.com/>. In this presentation, CRS has divided the data into RTW and union security states.

Note: Data are limited to wage and salary workers. Due to rounding, the sum of subgroups may not equal the corresponding larger groups. Due to varied data sources, employment levels may not be comparable to other tables. In accordance with its status in 2011, Indiana was classified as a union security state.

Researchers have posited many hypotheses to explain the divergent unionization rates between RTW and union security states and three common hypotheses are discussed below. These hypotheses are not mutually exclusive and can exert a collective effect on local unionization levels.²²

The *tastes hypothesis* suggests that RTW laws reflect a state’s preexisting opposition to unions and that the diversity in RTW laws simply reflects diversity in preferences toward unions. Under this hypothesis, RTW laws have no independent effect on labor organizing: RTW states have lower rates of unionization because that is the preference of workers in those states.

Examination of state-level unionization data shows support for the hypothesis that there was below-average union density in states before they passed RTW laws. Among the four states to pass RTW laws in the past 40 years, all of them had unionization rates below the national average prior to passage. Indiana was close to the national average (11.3% statewide vs. 11.8% nationally in 2011) but the three remaining states—Oklahoma (6.9% vs. 13.0% in 2000), Idaho (12.2% vs. 18.2% in 1985), and Louisiana (16.9% vs. 24.6% in 1975)—were substantially lower. The case of

²² For one discussion with empirical examples, see William J. Moore, “The Determinants and Effects of Right-to-Work Laws: A Review of the Recent Literature,” *Journal of Labor Economics*, Summer 1998, pp. 449-50.

Idaho is particularly unique, as the unionization rate in that state fell from 23.1% in 1981 to 12.2% in 1985. In this case, a drop in unionization preceded the passage of an RTW law, a sequence that is consistent with the tastes hypothesis but not with either of the other hypotheses discussed below.

The *free-rider hypothesis* suggests that by making dues payment optional, RTW laws lead to workers covered by a collective bargaining contract declining to pay dues. This leads to a decreased number of dues-paying members having to pay more for representation. The higher dues may exceed remaining members' willingness to pay for representation and more workers may stop paying dues, eventually leading to unsustainably high dues for the remaining members. Alternately, remaining workers may decline to pay higher dues, but this may restrict the representation services available to them.

As noted above, the share of covered nonpaying workers relative to total workers covered by a union contract is higher in RTW states than union security states. A 1995 study by Sobel divided covered nonpaying workers into "true free riders" (those who valued union representation and would join the union if dues were compulsory) and "induced free riders" (those who did not value representation and would seek other employment if dues were compulsory). The study estimated that, in RTW states, about 70% of free riders were induced free riders. This means that only 30% of covered nonmembers in RTW states were free riding in the traditional sense.²³

The *bargaining power hypothesis* is related to the free rider hypothesis and suggests that RTW laws reduce the bargaining power of unions and lead to reduced membership in the long run. Under this hypothesis, unions have less incentive to organize since they know only a portion of the workers covered by the collective bargaining contract will pay dues. This reduces organization and, in the long run, the prevalence of union jobs.

Empirical support for this hypothesis comes from a 1987 study by Ellwood and Fine, which looked at changes in new union organizing efforts after the passage of RTW laws. The study found that in the five years after states passed an RTW law, union organization fell 28% and union organizing success fell 46%. The same study found that these effects faded in subsequent years but that they may lead to a permanent decline in unionization levels.²⁴

The evidence from each of these intersecting hypotheses underscores the complexity of isolating the effect of RTW laws' actual effect on unionization.

Long-Term Trends in Unionization

While there is debate as to the magnitude of influence RTW laws exert on unionization levels, there is little debate that there has been a long-term decline in unionization that is independent of RTW policies. As **Table 3** shows, union density has declined in both RTW and union security states since 1983. The share of workers covered by a collective bargaining contract (i.e., union members plus covered workers who are not members) has followed a similar trend.

²³ Russel Sobel, "Empirical Evidence on the Union Free Rider Problem: Do Right-to-Work Laws Matter?," *Journal of Labor Research*, Summer 1995, pp. 347-365.

²⁴ David Ellwood and Glenn Fine, "The Impact of Right to Work Laws on Union Organizing," *Journal of Political Economy*, April 1987, pp. 250-273.

Table 3. Union Membership Rates in Right to Work and Union Security States, 1983-2011

| | 1983 | 1991 | 2001 | 2011 |
|----------------|--------------------|-------------------|-------------------|--------------|
| Total | 20.1% | 16.1% | 13.5% | 11.8% |
| RTW | 11.6% ^a | 8.5% ^b | 6.8% ^c | 5.7% |
| Union Security | 24.3% | 20.2% | 17.5% | 15.8% |

Source: Current Population Survey. State-level data were developed by Barry Hirsch and David Macpherson and posted at <http://www.unionstats.com/>. In this presentation, CRS has divided the data into RTW and union security states.

Note: 1983 is the first year for which state-level data are available. Data are limited to wage and salary workers.

- a. Includes the 20 states that had passed RTW laws by 1983.
- b. Includes the 20 states that had passed RTW laws by 1983 and Idaho.
- c. Includes the 20 states that had passed RTW laws by 1983, Idaho, and Oklahoma.

This nationwide decline in union density further complicates analysis of RTW laws. For example, an RTW state’s decline in unionization could be attributable to the RTW law, other state-level factors, or it could be influenced by a broader decline in unionization across the country.

Right to Work and Economic Outcomes

Given the complexity of establishing the relationship between RTW and first-order outcomes like unionization rates, it comes as little surprise that the literature related to the laws’ effects on higher-order outcomes such as employment and wages is inconclusive. Studies have yielded a variety of conclusions, largely dependent on how researchers conduct their analyses.

The remainder of this report will summarize existing (and frequently conflicting) data and scholarship related to RTW laws. It will discuss broad statistical trends, as well as several of the more sophisticated studies available that attempt to control for other factors and isolate the effect of RTW laws.

Right to Work and Employment

Broadly speaking, there are two competing views regarding the relationship between RTW laws and employment growth:

- One view is that RTW laws create a favorable business environment in which employers have increased flexibility in hiring, discharge, and wage-setting. Businesses are attracted to this environment and employment in these areas increases.
- The competing view is that business location decisions are driven by issues such as the local labor supply and investment incentives (e.g., subsidies or tax abatements). Under this view, RTW laws are a relatively insignificant factor in the location of a business.

Table 4 presents data on employment levels for RTW and union security states between 2001 and 2011. Aggregate employment growth was clearly greater in states with RTW laws and RTW

advocates often cite these trends as evidence that RTW leads to increased job growth and employment levels.²⁵

Table 4. Employment Levels for Right to Work and Union Security States, 2001, 2006, and 2011

| | Employment (in thousands) | | | Change in Employment | | |
|-----------------------|---------------------------|---------|---------|----------------------|-----------|-----------|
| | 2001 | 2006 | 2011 | 2001-2006 | 2006-2011 | 2001-2011 |
| Total | 131,590 | 135,836 | 131,336 | 3.2% | -3.3% | -0.2% |
| RTW States | 49,797 | 52,918 | 51,574 | 6.3% | -2.5% | 3.6% |
| Union Security States | 81,793 | 82,918 | 79,762 | 1.4% | -3.8% | -2.5% |

Source: Annual averages from the Bureau of Labor Statistics' Current Employment Statistics, generated at <http://www.bls.gov/sae/#data>. In this presentation, CRS has divided the data into RTW and union security states.

Notes: Due to varied data sources, employment levels may not be directly comparable to other tables. Total employment was determined by calculating the sum of states. In accordance with its status through 2011, Indiana was classified as a union security state.

Opponents of RTW laws, however, argue that aggregate data are misleading and mask substantial variation among both RTW and union security states. For example, during the 2001-2011 period illustrated in **Table 4**, employment grew 13.7% and 8.9%, respectively, in the union security states of Alaska and Montana while declining 3.5% and 2.2%, respectively, in the RTW states of Mississippi and Alabama. Skeptics of RTW laws' effect on employment suggest that these diverse outcomes show that RTW laws themselves do not lead to above-average employment growth.²⁶

Skeptics of the relationship between RTW laws and increased employment also note that RTW laws often exist alongside other, perhaps more compelling, pro-business policies. For example, North Dakota reported the nation's fastest employment growth between 2001 and 2011. While it is an RTW state, North Dakota also sponsors a multitude of other business-oriented policies such as tax exemptions, subsidized training, and other financial incentives.²⁷ North Dakota's growth may also have been attributable to non-policy characteristics such as an above-average presence of natural resources.

The difficulty in establishing the role of RTW in a state's economic performance can be seen in a frequently cited 1998 study by Holmes that analyzed manufacturing employment in counties along several state borders in which one state was an RTW state (termed "probusiness" in the study) and the other was a union security state (termed "antibusiness" in the study).²⁸ The author suggested that many local factors such as climate and access to transportation are similar on both

²⁵ For representative example, see National Institute for Labor Relations Research, *Right to Work States Benefit from Faster Growth, Higher Real Purchasing Power - 2011 Update*, October 25, 2011, <http://nilrr.org/2011/10/25/right-work-states-benefit-faster-growth-higher-real-purchasing-power-2011-update/>.

²⁶ For a representative critique, see Gordon Lafer and Sylvia Allegretto, *Does Right to Work Create Jobs?: Answers from Oklahoma*, Economic Policy Institute, March 16, 2011, <http://www.epi.org/publication/bp300/>.

²⁷ For a summary of incentives for businesses in North Dakota, see "Quick Facts," from the North Dakota Department of Commerce, Division of Economic Development and Finance at <http://www.business.nd.gov/uploads/resources/203/2010quickfactsbrochureprint.pdf>.

²⁸ Thomas Holmes, "The Effect of State Policies on the Location of Manufacturing: Evidence from State Borders," *Journal of Political Economy*, vol. 106, no. 4 (August 1998), pp. 667-705.

sides of the border and that varied outcomes on either side of the border would reflect the respective policies of the states.

The study tracked growth in manufacturing employment between 1947 (the passage of the Taft-Hartley Act) and 1992. It found that among counties within 25 miles of a state border, manufacturing employment in counties in RTW states grew about one-third faster than manufacturing employment in the nearby counties in non-RTW states. The author concluded that the abrupt changes in employment at the state borders were consistent with the hypothesis that state policies influence site location.

In spite of these findings, the author expressed uncertainty as to the influence of RTW laws. Holmes emphasized that while he used RTW and union security as a proxy for states' business-friendliness, "the effect found here is an *overall* effect of state policy. The analysis does not identify the contribution to the overall effect of any one particular policy, for example, a right-to-work law" (emphasis in original). Holmes further qualified the study's findings regarding RTW by citing a ranking of states' business climates. He noted that while RTW laws were only one of 15 equally-weighted criteria considered in the ranking, 14 of the 15 highest-ranked states had an RTW law, suggesting a strong correlation between RTW laws and other pro-business policies. Holmes concluded that subsequent study is necessary to isolate the effect of RTW laws. CRS was unable to locate such a study, and given the frequency with which the Holmes study is still cited in RTW discussions, it appears that no such widely accepted study has emerged.

Right to Work and Wages

Table 5 presents average annual wage data from RTW and union security states in 2011 and shows that wages in union security states were 16.6% higher than in RTW states. As is the case with employment levels, there is little controversy over these aggregate numbers and the trend depicted in the table is relatively well-established.

Table 5. Employment and Average Annual Wages in Right to Work and Union Security States, 2011

| | Employment | Total Wages (in thousands) | Average Annual Wage |
|-----------------------|--------------------|-------------------------------|------------------------|
| United States | 129,411,099 | 6,217,285,908 | \$48,043 |
| RTW States | 50,579,217 | 2,207,308,191 | 43,641 |
| Union Security States | 78,831,882 | 4,009,977,717 | 50,867 |

Source: Bureau of Labor Statistics, Quarterly Census of Employment and Wages (QCEW). In this presentation, CRS has divided the data into RTW and union security states.

Note: Due to varied data sources, employment levels may not be directly comparable to other tables. In accordance with its status in 2011, Indiana was classified as a union security state.

Many studies have attempted to control for differences between the states and isolate the effect of RTW policies. A 1998 summary of the empirical literature concluded that "RTW laws have no impact on union wages, nonunion wages, or average wages in either the public or private

sector.”²⁹ Subsequent studies have challenged this conclusion, with findings mixed between positive and negative wage effects from RTW laws.

A 2011 study by Gould and Shierholz examined household survey data to compare wages between RTW and union security states while controlling for personal characteristics (such as the lower share of workers in RTW states with college degrees) as well as macro state characteristics (such as the higher cost of living in union security states).³⁰ In total, the study controlled for 42 demographic, economic, geographic, and policy factors. The study concluded that “[o]nce we control for our comprehensive set of both individual and state-level observable characteristics, we find that the mean effect of working in a right-to-work state is a 3.2% reduction in wages.” The same study reached similar conclusions regarding negative relationships between RTW and employer-provided benefits.

Another study with a very different methodology challenges this conclusion. A 2003 study by Reed examined state-level income data and, unlike many other studies, controlled for the states’ varied economic conditions before the adoption of RTW.³¹ Among other variables, Reed controlled for each state’s per capita income in 1945, prior to the initial wave of RTW laws following the passage of the Taft-Hartley Act. The author reasoned that since RTW states were typically among the lower-income states at the time of enacting RTW, comparisons between RTW and union security states should control for this initial condition. The study concluded that, after controlling for income levels in 1945, RTW laws were related to wages 6.7% higher than in union security states. The study also concluded that this effect was strongest in states with the lowest levels of income in 1945 and that states with higher initial incomes experienced weaker or perhaps even negative effects from RTW laws.

Right to Work and Other Outcomes

Additional RTW-related research on other topics further illustrates the difficulty of comprehensively evaluating the effects of RTW policies. For example, Zullo examined fatal on-the-job injuries of construction workers in the context of RTW laws and union density. The study concluded that higher unionization rates in the local construction industry were related to lower fatality rates and that unionization’s relationship with reducing fatalities was strongest in union security states.³²

Conversely, studies that considered other outcomes suggested benefits to RTW laws. A 2009 study by Stevans found that RTW had little effect on employment but did have a positive relationship with proprietors’ incomes.³³ A 2000 study looked at the performance of stocks for companies based in Louisiana and Idaho during the periods when those states were initially

²⁹ William J. Moore, “The Determinants and Effects of Right-to-Work Laws: A Review of the Recent Literature,” *Journal of Labor Economics*, Summer 1998, p. 460.

³⁰ See Heidi Shierholz and Elise Gould, *The Compensation Penalty of “Right-to-Work” Laws*, Economic Policy Institute, Issue Brief #299, February 17, 2011, <http://www.epi.org/publication/bp299/>.

³¹ Robert W. Reed, “How Right to Work Laws Affect Wages,” *Journal of Labor Research*, Fall 2003.

³² Roland Zullo, *Right-to-Work Laws and Fatalities in Construction*, University of Michigan Institute for Research of Labor, Employment, and the Economy, March 2011, <http://irlee.umich.edu/Publications/Docs/RightToWorkLawsAndFatalitiesInConstruction.pdf>.

³³ Lonnie K. Stevans, “The Effect of Endogenous Right-to-Work Laws on Business and Economic Conditions in the United States: A Multivariate Approach,” *Review of Law and Economics*, 2009, pp. 595-614.

passing their RTW laws in 1976 and 1986, respectively. This study evaluated the performance of these stocks on days where there was key movement in RTW legislation in the respective states and found that, relative to the larger market, stocks from companies based in these states increased 2% to 4%.³⁴

Considerations for a National Right to Work Law

The primary issue in the ongoing RTW debate pertains to the rights and expectations of workers who are covered by a collective bargaining agreement but do not wish to pay union dues. Supporters of expanding RTW laws argue that these workers should have a right to choose whether or not to support their representing labor organization. Advocates of union security agreements emphasize that negotiating labor organizations are required to represent all workers in the bargaining unit, so it is a reasonable expectation to require all workers in the bargaining unit to financially support the labor organization.

Advocates and opponents of expanding RTW laws also posit higher-order effects to support their respective views. Supporters of RTW laws suggest that such laws increase employer flexibility, and may make it difficult for strong unions to be sustained, which in turn may lead to increases in efficiency and economic output. Opponents of RTW laws suggest that such laws reduce the financial viability of unions, leading to declines in collective bargaining and corresponding benefits for workers.

In assessing the potential effects of expanding RTW, existing empirical research is inconclusive. Comparing outcomes in states with and without RTW laws can provide limited perspectives on possible effects of these laws, but states' economies are extremely complex and even the most sophisticated studies are unable to fully isolate the effects of varied union security policies. Furthermore, the variation in findings among researchers suggests that no consensus will be reached in the near future. As such, the ongoing debate on RTW may be driven by factors other than rigorous empirical evidence.

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³⁴ Steven Abraham and Paula Voos, "Right to Work Laws: New Evidence from the Stock Market," *Southern Economic Journal*, October 2000, pp. 345-362.