

**Labor's Legacy: The Construction of Subnational Work Regulation**

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Version: August 19, 2019

**DRAFT**

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## ABSTRACT

In recent decades, much of the authority to regulate the workplace has shifted from national-level labor law to state-level employment law. What contributions, if any, did labor unions make to this historic shift in workplace governance? Using an integrated multi-method research design, Galvin uses quantitative and qualitative analyses in complementary fashion to test hypotheses and move incrementally closer toward drawing causal inferences. In the first part, he finds a strong statistical relationship between union density and state employment law enactments. Next, analyzing the cases the model identifies as “deviant” (Pennsylvania and Maine), he uses systematic process tracing to test the hypothesis that labor unions were integral players in legislative campaigns for stronger employment laws. He finds voluminous evidence to support the hypothesis that labor unions, even as they declined, contributed to the construction of this new system of subnational work regulation—arguably one of their most significant and durable legacies.

Over the last half-century, a new federalism has emerged in U.S. workplace regulation. As New Deal-era labor law has “ossified” and labor unions have declined, state legislatures have enacted thousands of laws raising wage-hour standards, expanding state enforcement capacities, and establishing private rights of action for aggrieved workers (Estlund 2002). This historic shift in the primary legal “guardian” of workers’ rights—from national labor law to subnational employment law—has been confirmed and elaborated by numerous legal scholars, political scientists, historians, and sociologists (e.g., Summers 1988; Becker 2016; Frymer 2019; Lichtenstein 2013; Milkman 2013).

Although many have observed the shift, explaining it has proven difficult. A causal connection is often theorized between the growth of employment laws and the decline of labor unions, but the direction in which the causal arrows point and the nature of the relationship remains unclear. Did declining unions contribute to the growth of employment law? Or did the growth of employment law contribute to the decline of unions? Or is the relationship spurious? Empirical tests have yielded mixed results and the causal mechanisms remain black boxes.

This paper seeks to make an improvement in this regard. Granting that dispositive causal relationships are unlikely to be established with observational, historical data, I adopt an integrated multi-method approach in which quantitative and qualitative analyses are used in a complementary fashion to move us incrementally closer toward drawing causal inferences with greater confidence. A basic regression model incorporating known theory serves as the starting point; the residuals from the model are used to select cases for in-depth analysis; and systematic process tracing then serves to explore hypothesized

causal pathways, validate measurement, and identify potential omitted variables. In this approach, quantitative and qualitative analyses do not seek to redundantly demonstrate the same outcome through different methods, as in other “mixed methods” approaches—rather, the strengths of each are strategically leveraged to help compensate for the weaknesses of the other (Seawright 2016b). The explicit goal is not to resolve the causal inference puzzle definitively, but to make piecemeal progress toward clarifying causal relationships and building theory.

Although the resulting inferences are circumspect by design, the implications of the findings reach more broadly, to debates over what unions do and “no longer do” (Freeman and Medoff 1984; Rosenfeld 2014). Recent scholarship has shown that many of the positive effects unions once had on the workforce have disappeared along with declining union density: union decline has been linked to rising income inequality and insecurity, wage stagnation, the deterioration of the moral economy, the magnified political influence of corporations and the wealthy, and more (Moody 1988; Bucci 2018; Kalleberg 2011; Western and Rosenfeld 2011; Rosenfeld 2014; Rosenfeld et al. 2016; Hacker and Pierson 2010; Gilens and Page 2014).

But the positive socioeconomic effects of higher rates of union density were always inherently ephemeral: by definition, union-threat effects only operate when unionization is viewed as a credible option, and all other equalizing social effects followed from that threat. State-level employment laws, in contrast, are far more durable—and relative to unions’ vanishing spillover effects, they are far more beneficial for workers. Notwithstanding their many inadequacies and tradeoffs, discussed further below, employment laws constitute some of the only institutional protections workers

have left to defend against exploitation in the workplace. If unions were in fact instrumental in their enactment, then the new federalism in work regulation may be said to represent one of organized labor's most significant and durable legacies.

Hence, our research question: What is the relationship between labor unions and the growth of employment laws? What contributions, if any, did unions make to the historic shift in workplace governance?

## **Background**

Most existing scholarship in this area is preoccupied with explaining the causes of union decline. As such, the proliferation of employment law is most often examined for its deleterious effects on unionism. But what of reverse causation? Might labor unions, even as they declined, have contributed to the growth of employment laws? Upon inspection, there are good reasons to suspect that labor unions may well have pushed for employment laws even as those laws helped to undermine the basis for unionism. In this section, I flesh out both sides of the debate and motivate the empirical analysis to follow.

Scholars have long treated employment law and labor law as “dichotomous, and in a fundamental respect incompatible, modes of intervention into workplace governance” (Sachs 2008, 2688). Whereas employment law provides highly individualized regulatory and legal proceedings for workers to vindicate their rights, the latter seeks to advance workers' rights by promoting concerted action, collective bargaining, workers' self-organization, and unionism. As employment law has proliferated, it is said to have undermined labor law and eroded the underpinnings of the

collective bargaining regime. These pernicious effects are generally said to operate at the level of ideas, institutions, and incentives.

In the ideational realm, labor historians have argued that the growth of employment law, itself a product of the “rights consciousness” which began to blossom in the 1960s, has undermined many of the norms and core concepts on which trade unionism depends: namely solidarity, collective action, and mutual support. “As the former became a near hegemonic way of evaluating the quality of American citizenship,” Nelson Lichtenstein (2005, x) summarizes, “the latter atrophied. Indeed, in its most extreme interpretation, rights consciousness subverts the mechanisms, both moral and legal, that sustain the social solidarity upon which trade unionism is based.” In this view, the growth of employment laws reflects an historic shift in thinking away from the “collective institutionalism that stands at the heart of the union idea.”

Legal scholars and political scientists do not dispute that ideational shifts have occurred in American culture, but they tend to emphasize doctrinal and institutional conflicts between employment law and labor law, which they argue have contributed to union decline. For example, because union contracts usually mandate arbitration procedures for redressing grievances, membership in a union effectively deprives workers of their state employment law rights. Paradoxically, then, the emergence of two separate institutional orders has divided union and nonunion workers and made it more difficult to forge a collective identity and mobilize in collective action. Employment law “functions to disorganize labor” and prevent “the very group-formation that is necessary to retain or improve the minimal terms,” writes Katherine Van Wezel Stone (1992, 638).

Tensions between individual-rights and collective-rights systems similarly underpin Paul Frymer’s (2008) study of the “bifurcated system of power that assigned race and class problems to different spheres of government.” Court interpretations of antidiscrimination employment laws, Frymer shows, “unintentionally weakened national labor law,” ultimately producing a more “diverse but weakened labor movement.” What is more, the employment laws that remain are not seen as adequate substitutes. Although employment laws provide workers with new substantive rights, they also feature high barriers to access, are woefully under-enforced by state agencies, and are dispersed unequally across the states (Weiler 1990; Weil and Pyles 2005).

In addition to these ideational and institutional conflicts, economists have pointed to the dueling incentives emerging from the simultaneous operation of labor and employment law. In the “government substitution hypothesis” first posited by Neumann and Rissman (1984), state regulatory functions are said to reduce workers’ incentives to unionize by providing for free what workers might otherwise get through their unions. Scholars have examined empirically the effects of a wide range of state-provided “union-like” benefits on union density, including social welfare expenditures, exceptions to at-will employment, protective employment laws, and more (Moore and Newman 1988; Hauserman and Maranto 1988; Moore et al. 1989; Bennett and Taylor 2001; Coombs 2008). Statistical tests have yielded mostly null results, but the debate persists, in part because of anecdotal evidence that unions have perceived a substitution effect and worked to combat it—as when Los Angeles unions sought to exempt their members from a minimum wage law in 2016 or when the AFL-CIO worked against a single-payer health care system in 1993 (Gottschalk 2000; Jamison 2016).

These theoretical frameworks are limited, however, by their preoccupation with explaining union decline. What of reverse causation? Did labor unions, even as they declined, contribute to the growth of employment laws?

Despite the many downsides of employment law as identified by historians and social scientists, unions may have had multiple reasons to promote its growth. Perhaps unions saw benefit in taking wages and other terms and conditions of employment “out of competition,” since a more level playing field might make competitive employers more likely to bargain with unions (Porter 2006; Jacobs and Smith 2018). Or perhaps by taking certain issues off the bargaining table, employment laws helped to limit the range of issues over which unions would have to negotiate with employers, thereby increasing their leverage over the issues that remained (Andrias 2016). Or perhaps unions were engaged in logrolling, seeking to trade their support for employment laws for other groups’ and legislators’ support for stronger labor laws to facilitate unionization (Freeman and Medoff 1984).

Or unions’ behavior may be less instrumental and strategic than ideological and interpretive. It could simply be that many (but clearly not all) unions, as pillars of the labor movement, have a wider purview than other interest groups and are inclined to promote priorities that transcend the interests of their members. As Ahlquist and Levi have recently shown, certain unions have self-consciously expanded their “communities of fate” to include “unknown others for whom the members feel responsibility” (Ahlquist and Levi 2013, 2). In a similar vein, Freeman and Medoff (1984) found in their classic study that although unions consistently failed to advance their own self-interests in legislative politics, they were far more effective in amplifying “the voice of workers and

the lower income segments of society” more broadly. And although Western and Rosenfeld (2011) and Rosenfeld (2014) have emphasized the disappearance of unions’ positive spillover effects amid union decline, they too note that one of the key contributions unions made to the moral economy included their work as powerful advocates for universal social legislation and redistributive policies, opposing cuts and pushing for increases in substantive benefits for all.

Scholarly debate over the relationship between employment law and labor unions, in other words, remains at a theoretical impasse, with reasons to think the causal arrows may point in either direction. What the debate has lacked thus far is systematic empirical investigation of the posited relationships. What is associated with what? Is the enactment of more employment laws associated with declining rates of union density? Or was employment legislation more likely to pass in places where unions were stronger? And beyond statistical associations, what do the cases reveal about the nature of the relationship? Did unions oppose government intervention out of fear that public policy would “substitute” for union services and erode support for the labor movement, or did they support such legislation and leverage their political clout to secure its enactment? Or is the relationship utterly spurious?

Evidence of union involvement in campaigns to enact employment laws would not negate arguments about the deleterious effects of employment laws on unionism more generally – unions may well have been shooting themselves in the foot. But it would raise new questions about whether and how employment laws may *complement* rather than *substitute* for union services and prompt further inquiry into the tradeoffs. But before we can begin those discussions, the basic contours of the relationship need to be fleshed out.

Statistical analyses only reveal associations, but those relationships can helpfully serve as the starting point for further investigation. The first empirical section below thus presents quantitative analyses—data, methods, and statistical findings. Those findings are then used to select cases for in-depth qualitative analyses, which are presented in the following section.

### **Quantitative Analyses**

The most encompassing analysis of the relationship between employment law and union decline was conducted by renowned labor economist Richard Freeman (1986) in his critical examination of the “government substitution hypothesis,” published in the Industrial Relations Research Association’s *Proceedings*. Using both cross-national and cross-state data, Freeman tested the primary substitution hypothesis and also looked for reverse causation. Freeman found no support for the government substitution hypothesis and noted that Neumann and Rissman’s model was not robust to alternative specifications, sample periods, or measures of the dependent variable.

But in a surprising twist, Freeman found much stronger empirical support for the “reverse causal link.” In his cross-country analysis, Freeman found a positive statistical relationship between union density and protective legislation for workers, writing that “unions have fared better, not worse” in countries with more such laws (262). And in his cross-state analysis, he found that “more highly unionized states are, indeed, more likely to pass protective legislation. In sum, the evidence across states suggests that unionism leads to protective worker legislation, but that such legislation does not have adverse feedback effects on union density” (265).

Freeman's analysis was limited to basic regressions, however, and he did not dig any deeper into the nature of the positive relationship. Further, although his model was better specified than previous investigations of the substitution hypothesis, it was not longitudinal but rather took a snapshot of each state's "level of statutory protection of workers" in 1985. Constructed by the Southern Labor Institute (1986), the index measured how many out of fourteen common types of worker protection laws were on the books in each state during that summer. Still, Freeman's attentiveness to reverse causation marked his analysis as ahead of its time.

To replicate and improve upon Freeman's analyses, I use a more fine-grained measure taken from the Bureau of Labor Statistics's annual survey of state employment law enactments published in the *Monthly Labor Review* (BLS 1918-2017). The data include the total number of employment laws enacted by state each legislative session (regular and special) between 1973 and 2014. During this period, states enacted over 6,000 employment laws. This more granular data permits the use of panel analysis to generate more precise estimates.

I use the same treatment and control variables as Freeman, but add two more controls and examine a longer span of years. The dependent variable is the number of employment laws enacted in each state-year (two-year legislative session). The main treatment variable is *Union Density*, which averages the state's percentage of nonagricultural workers who are members of unions over each two-year legislative term (Hirsch and Macpherson 2013). A greater share of unionized workers may indicate a more politically powerful labor movement, which may push for the enactment of stronger employment laws (or not). *Manufacturing* is the share of the state's nonagricultural

workforce employed in manufacturing—as a state’s manufacturing industry declines, pressure for stronger government regulation or protection via union representation may grow (BLS). *Income* measures per-capita personal income in the state, since economic modernization is related to policy innovation more generally and states with richer populations may be more likely to enact employment laws (BEA). *RTW* is a dummy variable indicating whether the state adopted a “right to work” law, since those states may be less inclined to pass worker-friendly employment laws. Right to work is also sometimes used as a proxy for the political strength of business.

In addition to the controls replicating Freeman’s model, I add *Legislative Productivity*, which is the overall number of laws enacted by the state legislature during the two-year term (minus vetoes plus overrides), since states that typically enact more laws in general may be more likely to enact employment laws than states that are generally less legislatively productive, from the annual *Book of the States* (Council of State Governments 1935-2017); and *State Policy Liberalism*, which is the Caughey-Warshaw (2018) state-year measure of the mass public’s economic policy liberalism, included because states with more ideologically liberal populations on economic matters may also be more likely to enact worker-friendly employment laws.

Using these variables, I conducted a time-series cross-section analysis and estimated the model with and without year and state fixed effects, since unobserved time-invariant characteristics of states—such as political culture, political history, industrial mix, demographic composition of the workforce, and the like—are likely confounders. Results are reported from each specification. The Driscoll and Kraay standard errors are heteroskedasticity- and autocorrelation-consistent and robust to general forms of cross-

sectional dependence, all of which is necessary given the structure of the data (Driscoll and Kraay 1998). Data limitations confine the time-series cross-section analysis to the period 1976–2013.<sup>1</sup>

**Table 1: Estimating the Relationship between Union Density and Employment Law Enactments (panel data, 1976-2013)**

|                          | (1)                       | (2)                      | (3)                       | (4)                      |
|--------------------------|---------------------------|--------------------------|---------------------------|--------------------------|
| Union Density            | 0.115***<br>(0.0204)      | 0.106***<br>(0.0152)     | 0.132***<br>(0.0357)      | 0.102***<br>(0.0335)     |
| Manufacturing            | -8.643***<br>(2.193)      | -8.334***<br>(2.251)     | -11.68***<br>(4.327)      | -9.647**<br>(4.286)      |
| Income                   | 8.61e-05***<br>(1.25e-05) | 7.81e-05**<br>(3.10e-05) | 7.10e-05***<br>(1.86e-05) | -4.68e-05<br>(3.30e-05)  |
| RTW                      | -1.902***<br>(0.201)      | -2.160***<br>(0.268)     | 1.184<br>(0.748)          | 0.747<br>(0.836)         |
| Legislative Productivity | 0.00566***<br>(0.000633)  | 0.00585***<br>(0.000681) | 0.00358***<br>(0.000429)  | 0.00317***<br>(0.000579) |
| State Policy Liberalism  | -0.981***<br>(0.365)      | -1.695**<br>(0.689)      | 0.431<br>(0.711)          | 2.989***<br>(0.998)      |
| Year fixed effects       | No                        | Yes                      | No                        | Yes                      |
| State fixed effects      | No                        | No                       | Yes                       | Yes                      |
| Constant                 | -0.440<br>(0.738)         | 0.121<br>(0.655)         | 0.544<br>(0.839)          | 1.100<br>(1.020)         |
| Observations             | 1,000                     | 1,000                    | 1,000                     | 1,000                    |
| R-sq/within R-sq         | 0.405                     | 0.431                    | 0.116                     | 0.176                    |
| Number of groups         | 50                        | 50                       | 50                        | 50                       |

?

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

<sup>1</sup> Specifically, the Bureau of Labor Statistics' historical database of state-level unemployment uses estimates that are limited to 1976 and later.

In all four models, union density is positive and statistically significant, meaning higher union density predicts the enactment of more employment laws. This relationship holds both *within* and *across* states, even when controlling for time trends. In addition, legislative productivity is positive and significant and the share of nonfarm employment in manufacturing is negative and significant in each model, suggesting that more legislatively productive states enact more worker protections and the tendency is greater as the share of manufacturing jobs in the state declines. The relationship between employment laws and both personal income and mass economic liberalism depends on whether one is looking within or across states, and right-to-work is negative and significant when looking across states. Taken all together, then, these results indicate that union density and employment law enactments are positively associated and suggest that political factors matter as well, thus recommending further examination of why (see discussion below).

To check the robustness of the above analyses, I consider three alternative measures that theoretically capture the same outcome of interest, albeit in different ways. The dependent variable in Model 1 measures the number of eleven major state-level employment laws on the books in each state in 2014, as tracked by two authoritative sources: the National Conference of State Legislatures and the Department of Labor.<sup>2</sup> Model 2 uses for its dependent variable a Chamber of Commerce study in which researchers examined thirty-four types of laws on the books in 2009 and graded each state on the extent to which its laws increased the regulatory burden on business and

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<sup>2</sup> See Table 3, below, for categories.

opened the door to litigation (Eisenach 2011). Model 3 uses the Index of Worker Freedom compiled by the conservative Alliance for Worker Freedom in 2009, which tracked fifteen laws that it claimed obstructed workers' freedom and drove away high-quality workers (Johnson and Hollenbeck 2009). A positive sign on both models indicates a less hospitable environment for business, arguably a more protective context for workers.

These three models, presented in **Table 2**, use the same set of explanatory variables as above, but union density is divided into two variables, as in Freeman (1986): the baseline level of union density prior to the period under investigation and the percentage point change in union density over the period (to account for the fact that the change in union density may affect states differently depending on the level at which they started).

**Table 2: Estimating the Relationship between Union Density and Employment Law Enactments (Alternative Dependent Variables)**

|                          | NCSL and DOL<br>Employment Laws<br>(1) | Chamber of<br>Commerce<br>(2) | Index of Worker<br>Freedom<br>(4) |
|--------------------------|--|-------------------------------|-----------------------------------|
| Union Density Baseline   | 0.231***<br>(0.0606)                   | 0.655**<br>(0.285)            | 0.157**<br>(0.0706)               |
| Union Density Change     | 0.224**<br>(0.0856)                    | 0.135<br>(0.402)              | 0.0769<br>(0.0998)                |
| Income                   | 4.60e-05<br>(8.73e-05)                 | 0.00102**<br>(0.000410)       | 0.000123<br>(0.000102)            |
| Manufacturing            | 0.633<br>(3.225)                       | -2.391<br>(15.17)             | 6.500*<br>(3.759)                 |
| Legislative Productivity | 8.72e-06<br>(3.35e-05)                 | 0.000308*<br>(0.000158)       | 2.38e-05<br>(3.91e-05)            |
| State Policy Liberalism  | 2.809<br>(1.986)                       | -8.309<br>(9.337)             | 3.798<br>(2.314)                  |
| Right to Work            | -1.298*<br>(0.699)                     | -15.81***<br>(3.285)          | -3.582***<br>(0.814)              |
| Constant                 | 3.389<br>(2.394)                       | 43.59***<br>(11.26)           | -11.88***<br>(2.790)              |
| Observations             | 50                                     | 50                            | 50                                |
| Adj. R-squared           | 0.624                                  | 0.725                         | 0.760                             |

□

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

The results in **Table 2** confirm that above and beyond all other factors, union density is strongly related to state employment laws: across all models, the baseline level of union density (in the year before the analysis, 1972) has substantively large and statistically significant coefficients, as does union density change in the first model (meaning the higher the starting point and the less decline in union density over time, the

more laws enacted). In all models, right-to-work is also strongly related in the expected direction.

These basic regression models, of course, say nothing about causal pathways. They are also unable to rule out the possibility that overlooked factors were more important or might explain both union density and employment law activity. Nor do they indicate whether the standard measure of union density is a good proxy for unions' political strength: higher levels of union density may correspond to a more fractious labor movement with less political influence, while a state with lower levels of union density may still have powerful unions that exercise significant political clout. To move beyond blunt statistical relationships and begin searching for answers to these questions, case studies can be particularly helpful. But how to select cases? The next section segues from the quantitative to the qualitative analyses, beginning with a discussion of how the statistical analysis can guide the selection of cases.

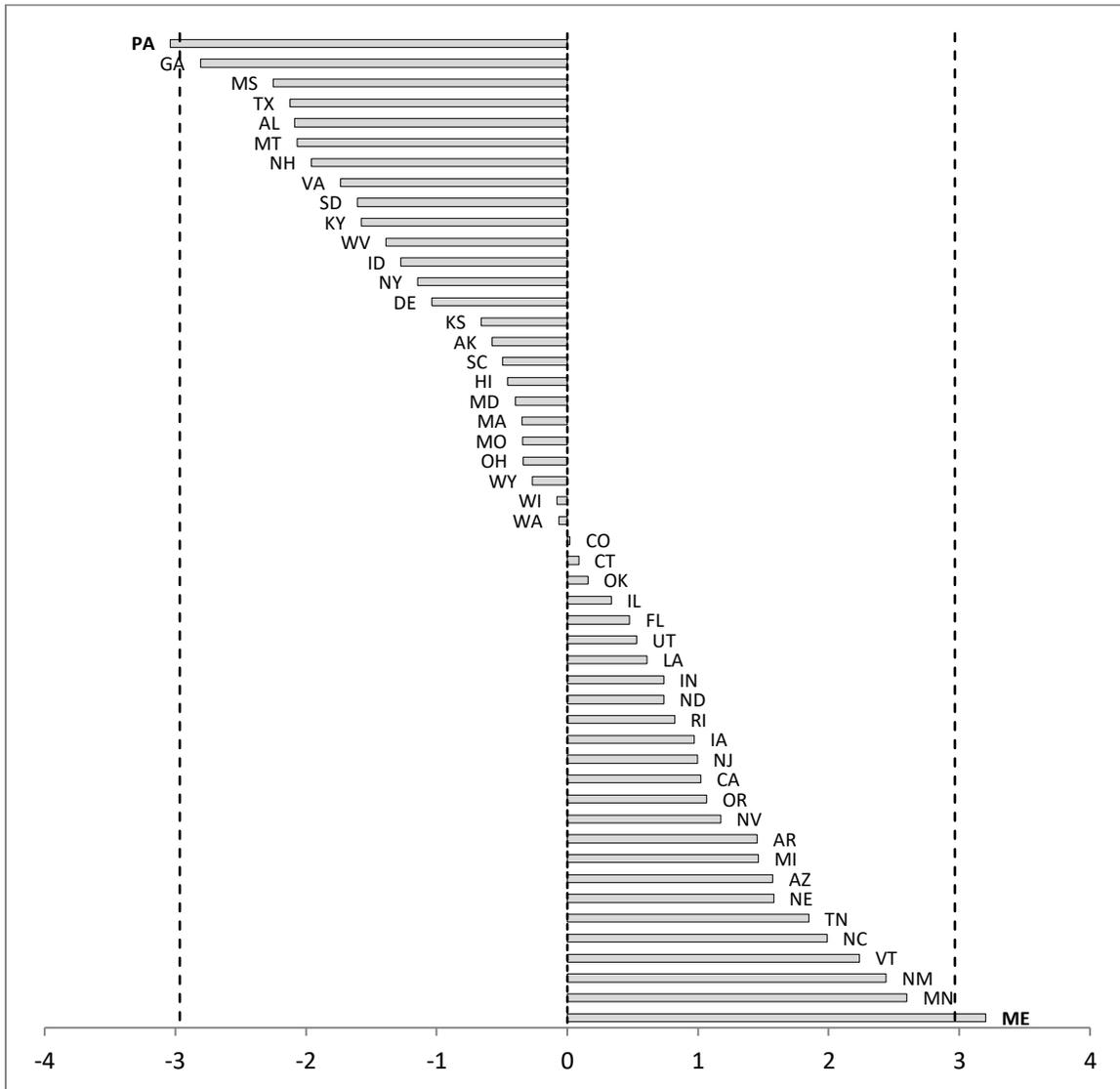
### **Qualitative Analyses**

To maximize the analytical payoff of in-depth case studies, leading qualitative methodologists in the social sciences suggest that the otherwise intuitive approach of randomly selecting cases or choosing cases that are “typical,” “most similar,” “most different,” “influential,” or “extreme-on-Y” is usually less valuable than selecting cases that are “deviant” (Seawright 2016a, 2016b; Seawright and Gerring 2008; George and Bennett 2005; Gerring 2006). “Deviant” cases are those that are least-well-explained by the regression model: they are identified by the extremity of their fitted value relative to their observed value – which is to say they are the cases with the highest residuals.

Thanks to their unusual statistical properties, Seawright (2016a) explains that “deviant cases are valuable for several kinds of discovery: learning about sources of measurement error in the outcome, discovering information about the causal pathway connecting X and Y, and finding out about sources of causal heterogeneity” (507). In short, they provide the researcher with the highest probability of turning up analytically useful information about the relationships of interest. If evidence of the hypothesized causal pathway is present in these cases, it bolsters our confidence; if other more important factors are at work, or if measurement error is clouding the relationships, deviant cases are well-positioned to bring those issues to the surface. This new information can then be used to improve the statistical model in subsequent iterations.

The procedure for identifying deviant cases is straightforward in no-frills regression analyses like those presented in **Table 2** above. Using Model 1, predict residuals for each observation (state); those observations with the highest residuals (as a rule of thumb, those falling more than two standard deviations from the mean) are considered deviant cases that are explained least-well by the model. **Figure 1** reports the residuals, with vertical bars representing two standard deviations from the mean (zero).

**Figure 1: Identifying “Deviant” Cases for In-Depth Analysis**



Mean=0, standard deviation=1.48. Dashed lines indicate 2xSD ( $\pm 2.96$ ).

As shown, two deviant cases are identified, one with extremely high residuals (Maine) and one with extremely low residuals (Pennsylvania). Which is to say Maine has a stronger employment law regime than the model predicts and Pennsylvania's is weaker

than expected. Case studies can then be used to investigate why those two states are so poorly explained by the model.

### **Case Studies**

The task of the case study is to identify evidence that can be used to evaluate the hypothesized causal pathway—which, again, is that labor unions were integral players in legislative campaigns for stronger employment laws. To provide support for the hypothesis, unions need not have won every policy campaign, but there should be evidence that they were consistently viewed as important political actors. Whether unions were on the “offense” and seeking to effect major policy change, on the “defense” and working to prevent policy changes they disliked, or simply trying to move the substantive content of legislation closer to their favored policy position, we are looking for evidence of a prominent political role. For it remains possible that the statistical relationship revealed above is spurious. Close examination of case evidence cannot conclusively resolve the causal puzzle, but it can provide evidence that is consistent with the hypothesis of union involvement and difficult to square with alternatives. The case study also provides a check on measurement and helps to identify potentially omitted variables. Any such discoveries would move the research process forward incrementally.

But how to tackle the case study in a systematic way? Between 1973 and 2014, Pennsylvania enacted 59 employment laws and Maine enacted 206 (with hundreds more likely debated in each state)—far too many policy campaigns to examine in comprehensive detail. Although it is tempting to randomly select a subset of these employment laws and examine the role of unions in their enactment, looking only at

successful cases would threaten to bias our inferences (e.g., unions may have only pushed for laws they knew had a good chance of success). I therefore set out to examine any and all policy campaigns I could find—irrespective of whether they resulted in legislative enactments—across a predetermined set of categories of employment law.

But which categories? The dependent variable used in Model 1 in Table 2 above offers a simple and transparent measure of 11 prominent areas of employment law as reported by two authoritative sources (**Table 3**). States generally receive a 1 if they had a major law on the books governing each particular policy area in 2014 and 0 if there was no law.<sup>i</sup> **Table 3** reports the measures for Pennsylvania and Maine.

**Table 3: Employment Law Regime Scores: Maine and Pennsylvania**

|   |                                 | Maine | Pennsylvania |
|---|---------------------------------|-------|--------------|
| <b>Wages</b>                              | Minimum wage (DOL)              | 1     | 0            |
|   | Overtime (NCSL)                 | 1     | 1            |
|   | Prevailing wage (DOL)           | 1     | 1            |
| <b>Hours and Leave</b>                    | Family/Medical Leave (NCSL)     | 1     | 0            |
|   | Meal/Rest periods (DOL)         | 1     | 0.5          |
| <b>Discrimination and Retaliation</b>     | Discrimination (NCSL)           | 1     | 1            |
|   | Drug and Alcohol Testing (NCSL) | 1     | 0            |
|   | Whistleblower (NCSL)            | 1     | 0.5          |
| <b>Terms and Conditions of Employment</b> | Child Labor (NCSL)              | 1     | 1            |
|   | Misclassification (NCSL)        | 1     | 0.33         |
|   | OSHA State Plans (DOL)          | 1     | 0            |

☐

Sources: the National Conference of State Legislatures (NCSL) and the Department of Labor (DOL)

Local newspapers serve as the primary sources for the analysis. Newspapers are fallible, of course, since journalists may not have detected the involvement of unions, not all relevant legislative campaigns may have been covered, and the extent of coverage may not be equivalent in all cases. Although this means that union involvement may have occurred and we cannot detect it, at least this biases the analysis *against* the hypothesis that unions were involved.

The case analyses seek answers to two main questions: *Were unions integral to the policy process? And, how integral were they?* Were they considered key actors in all legislative campaigns, or just some? How much leadership did they exert? Did they only donate money, or did they also testify, gather signatures, mobilize letter-writing campaigns, and so on? In other words, what does the causal pathway actually look like?

Sources include 308 full-text searchable local Pennsylvania newspapers with coverage extending from 1978 to the present and 23 local newspapers in Maine, with most coverage from 1992 to the present (Newsbank). Using broad search terms, I examined hundreds of newspaper articles covering any and all campaigns relating to the minimum wage; family and medical leave; discrimination; and employee misclassification (one area of law from each of the four major categories). Each policy arena has long been a site of political contestation and legislative debate, featuring multiple efforts over the years to establish, amend, or alter the legal status quo in each policy area. Within each policy area, multiple policy campaigns are identified, thus multiplying our number of “causal process observations” many times over (Collier et al. 2004).

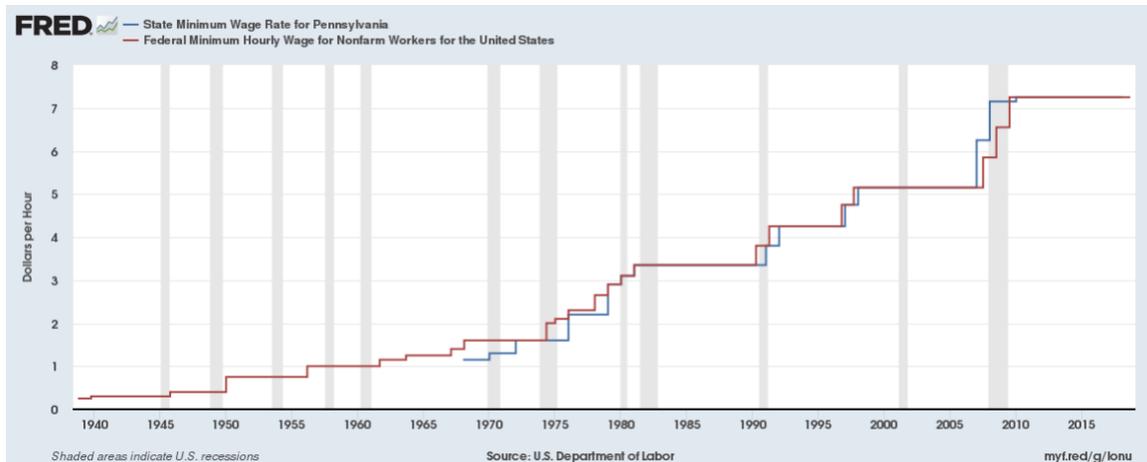
## **Pennsylvania**

Historically, Pennsylvania has had one of the highest rates of union density in the nation. In 1972, the year just prior to the empirical analysis above, Pennsylvania's 37.2 percent union density ranked fourth highest in the nation. Despite experiencing one of the steepest declines over the decades, it remained in the top third of all states by 2014—private sector union density was 16<sup>th</sup> highest, public-sector density ranked 11<sup>th</sup>. Yet over these four decades, Pennsylvania enacted only a handful of cornerstone employment laws—many fewer than the model would predict for a state like Pennsylvania. Why? Were Pennsylvania labor unions disengaged from the legislative process? Did they view employment laws as a threat rather than a complement to unionism? Did other intervening factors cause Pennsylvania to enact fewer laws than other states with comparably high rates of union density?

### **Minimum Wage**

Since the Fair Labor Standards Act established the first federal minimum wage in 1938, Pennsylvania either lagged behind or kept pace with the federal wage floor. But in 2007 and 2008, Pennsylvania's minimum wage leap-frogged the federal rate for the first time. In July 2009, Pennsylvania again matched the then-increased federal rate (\$7.25), which is where both rates have remained since (see **Figure 2**). Our focus is therefore on the events surrounding the 2007-2009 increases and the lack of legislative action thereafter. Pennsylvania receives a zero in this category because in 2014 its minimum wage was not higher than the federal rate.

### **Figure 2: Pennsylvania and Federal Minimum Wage, 1938-2018**



Source: FRED, Federal Reserve Bank of St. Louis,

<https://fred.stlouisfed.org/series/STTMINWGPA>

The campaign to raise Pennsylvania’s minimum wage above the federal level of \$5.15 intensified in the fall of 2005 under the leadership of Democratic Governor Ed Rendell. Noting that Rendell “needs labor union support for his re-election bid next year,” the *Pittsburgh Post-Gazette* reported that Rendell led a rally of hundreds of workers, labor union leaders, and other allies at the Capitol rotunda to pressure the legislature to enact a higher wage floor (Barnes 2005). Opponents counter-mobilized, and typical arguments were aired: supporters argued that raising the inflation-eroded minimum wage in steps, to \$6.25 in 2006 and \$7.15 in 2007, would help pull a quarter million workers out of poverty in a responsible way; opponents said it would deter business investment and cost the state jobs and significant economic growth opportunities. Unions were prominently and unmistakably involved in pushing the legislation: participating unions were reported to include the Pennsylvania State Education Association, Teamsters, Communication Workers of

America, International Brotherhood of Electrical Workers, and United Food and Commercial Workers (Barnes 2005).

Both houses of the legislature were controlled by Republicans—the GOP controlled the Pennsylvania State Senate for all but one year (1993) between 1981 and 2018—and the bill did not pass in the first legislative session. By June 2006, however, “after months of pressure by Democrats, labor unions and advocates for the poor,” Republican leaders in both the House and Senate allowed a vote on a bill to increase the wage floor \$2 over two years, from \$5.15 to \$7.15, with a slower schedule of increases for small business owners (AP 2006; Levy 2006). The bill also maintained its longstanding requirement that Pennsylvania keep pace with the federal minimum wage, should the federal rate be increased (which explains Pennsylvania’s final increase to \$7.25 in 2009). With the highly publicized support of organized labor, most Democrats and some Republicans from southeastern Pennsylvania formed a majority in support of the measure. Rendell signed the bill in July (Ibid.; Toland 2008).

The minimum wage increases thus appear to be the result of a confluence of factors: a vigorous push by a popular Democratic governor, pressure from outside groups including organized labor, a bipartisan coalition of support in the legislature, and national forces propelling the U.S. Congress to increase the federal minimum wage around the same time. The relative influence of organized labor in this process is impossible to disentangle, but its participation is confirmed.

After 2009, labor unions continued to push for minimum wage increases on multiple occasions. But with Republicans in control of both houses of the legislature, none of the proposed bills advanced (Giammarise 2014; Skrapits 2015; Bloomingdale

2015). Democratic politicians remained responsive to organized labor's interest in the issue: in 2015, Democratic Governor Tom Wolf called boosting the state minimum wage to \$10.10 one of his highest legislative priorities at a meeting with the state AFL-CIO. "But getting a higher minimum wage could be a tough sell in the Legislature, where Republicans control both the House and the Senate," *The Morning Call* opined (2015).

Pennsylvania's score of "0" on the minimum wage in **Table 4** cannot therefore be attributed to organized labor's lack of interest or political engagement in this area. Organized labor was present and active, vigorously pushing for wage increases on multiple occasions over the years, often against the odds. But unions were stymied by what appears to be a potential omitted variable in the analysis above: Republican Party control of crucial legislative veto points—the senate and frequently the legislature as well. This may constitute part of the explanation for why Pennsylvania's employment law regime is so poorly predicted by the model.

### **Family and Medical Leave**

Although 13 states had their own family and medical leave acts on the books in 2014, Pennsylvania did not. Bills to give Pennsylvania workers the right to 12 to 18 weeks of unpaid leave following the birth or adoption of a child or to care for a seriously ill relative were introduced in 1988, 1989, 1990, 1991, 1992, and 1993, but none of the bills were passed by either house of the legislature until the Democratic-controlled House finally passed a version in September 1990. When it reached the Republican-controlled Senate, however, it sat in the Labor and Industry Committee for 22 months and never reached the floor for a vote. Democrats took control of the Senate after the 1992 elections—achieving a brief period of unified "trifecta" control of state government—and

planned to enact the legislation in 1993. But the bill was tabled when President Bill Clinton signed the federal Family and Medical Leave Act in February 1993, rendering the state law moot. “We were ready. That would have been done,” the bill’s longtime sponsor, Rep. Kevin Blaum said (Eshleman 1993).

At each stage of the process, organized labor was an active, vocal, and public advocate of moving the legislation forward. In 1988, Judith Heh, then secretary-treasurer of the state AFL-CIO, testified on its behalf at the House Labor Relations Committee. Arguing that the U.S. and South Africa were the only industrialized nations that lacked mandated parental leave, she said: “It should be obvious that new parental-leave policies need to be established,” she said. “The cost, in terms of family financial instability, personal insecurity and breakdown in important family bonding relationships [is] staggering” (Brutto 1988). Heh continued to represent the AFL-CIO in supporting the legislation in 1989 alongside Marilyn DePoy of AFSCME (Conrad 1989b).

By 1989, the coalition in support of a Pennsylvania family and medical leave act had broadened. “Spearheaded by the AFL-CIO and AFSCME labor unions,” an entity called the Family and Medical Leave Coalition was established to coordinate the lobbying efforts among multiple groups. It was said to include “the state AFL-CIO, American Civil Liberties Union and League of Women Voters and other groups,” including “elderly groups” (Ibid.; Conrad 1989a). The unions’ clout with Democratic members of the legislature was reportedly important but insufficient: “With the unions’ support, efforts to move state legislation face a better chance in the Democratic-controlled House than the Republican Senate” (Ibid.).

The 1990 effort featured the same advocates and major spokespeople as in earlier years, including AFL-CIO's Judith Heh (Dochat 1990; Brutto 1990c). After a vote on the legislation deadlocked in the House in March 1990, an altered version finally passed the lower chamber in September. The state AFL-CIO was reportedly the "organization in the forefront of pushing for family leave" (Brutto 1990a). As the bill languished in the Senate, the AFL-CIO continued to mobilize supporters, orchestrating "a campaign in which it sent 100,000 postcards to senators, asking them to support the bill" (Brutto 1990b). The campaign failed to overcome Republican opposition, however, and the bill died (McNamara 1992; Reeves 1993). It was revived in 1993 under unified Democratic government but was ultimately tabled when a similar federal law was enacted (Eshleman 1993).

In the years since, legislative campaigns to strengthen family-related leave laws—e.g., time off to take a child or elderly relative to a doctor's appointment, attend a child's activity during the school-day or participate in a parent-teacher conference—reveal equally strong evidence of union involvement. For example, in 1998 a bill to provide 24 hours of unpaid leave for family issues per year was reportedly "backed by William George, president of the AFL-CIO, who viewed it as a means of helping parents find time to participate in their child's education" (O'Matz 1998).

In sum, legislative initiatives in this key area of employment law received consistent support from major unions in Pennsylvania. As in the case of the minimum wage, the absence of union support is evidently not why Pennsylvania still lacks its own family and medical leave law: the explanation appears to be a straightforward story of

partisan disagreement and nearly continuous Republican control of the state Senate since 1981.

## **Discrimination**

Pennsylvania does, however, have a broad anti-discrimination statute on the books: the Pennsylvania Human Relations Act of 1955, which prohibits a range of discriminatory practices on the basis of a person's "race, color, religious creed, ancestry, age or national origin by employers, employment agencies, labor organizations and others." However, there is no mention of unions' support for this bill, either historically or around the major amendments of 1997. Nor is there evidence of any union support or advocacy surrounding Rendell's executive order in 2003 adding "gender identity and expression" for state employees (Budoff 2003; Fishlock 2003). Nor did Pennsylvania unions lend support to a (failed) bill to protect lesbian, gay, bisexual, and transgender workers from discrimination in the workplace through an amendment to the Pennsylvania Human Relations Act in 2015-16 (Pesto 2015; Swift 2016).

Only in 2018, after a concerted effort by the SEIU and UFCW to pass a resolution at the biennial convention of the state AFL-CIO did the federation agree "to officially push for a state law to protect employees from workplace discrimination on the basis of sexual orientation and gender identity." Possibly reflecting dissension within the ranks or a lack of full information, the resolution added that the AFL-CIO would work to "educate our members on the importance of LGBTQ equality in our collective struggles for justice" (Moore 2018).

In sum, there is no evidence that organized labor in Pennsylvania supported legislative efforts to expand the state's anti-discrimination policy to protect a wider range

of workers. While myriad elected Democrats and other supportive interest groups supported such amendments over the years, labor was never reported to be an advocate. Labor's most recent resolution in support of a law in this area came belatedly and was not linked to any active policy campaign. Pennsylvania's score of 1 for this category, then, cannot be attributed to labor union involvement or influence. Further implications are discussed below.

### **Employee Misclassification**

In 2010, Rendell signed the Construction Workplace Misclassification Act into law (constituting Pennsylvania's 0.33 score in this category). Originally introduced in 2008, the bill made it a criminal offense to misclassify construction workers as independent contractors. The bill was "supported by union groups and opposed by business organizations," *The Daily American* reported (American 2008). Studies had shown that the deliberate misclassification of employees as independent contractors was widespread in the construction industry. It allowed employers to avoid paying payroll taxes, unemployment and workers' compensation insurance, and often resulted in noncompliance with minimum wage and overtime laws. These practices were estimated to save employers 30 percent on labor costs while giving an unfair advantage to "unscrupulous" employers (Belser 2010; Intelligencer 2010). The law required that independent contractors must meet several tests to establish self-employment.

Reportedly, "unions were pushing for a broader law to cover more than just the construction industry, but the final version was narrowly defined" (Deyo 2011). The Teamsters, for example, lobbied for a stronger version of the bill that would have included transportation and other workers as well, but the idea was said to "face

insurmountable political opposition” (DiGiovine 2010). Still, unions claimed victory: the president of the Pennsylvania Building and Construction Trades Council called it a “good step forward” that helped with “cleaning up an industry that has had misclassification of workers for forever” (Deyo 2011).

Enforcement in the ensuing years was weak, however, due to shifting administrative priorities after Rendell left office in 2011. The Department of Labor and Industry stopped issuing reports on the number of complaints and lawsuits after 2011; one county district attorney called it “a toothless tiger” (Call 2014; Rhodin 2014). In 2015, the president of the state AFL-CIO authored an op-ed claiming that misclassification was costing workers in Pennsylvania tens of millions of dollars every week in lost wages and called for stronger and more encompassing legislation. Thus, although the legislation did not go as far as organized labor would have liked, there is clear evidence that unions strongly advocated for the law’s passage, contested its lack of enforcement thereafter, and pushed for further legislation.

## **Discussion**

In three of the four categories of employment law – and within multiple legislative campaigns on behalf of each – the evidence indicates that Pennsylvania unions were prominent advocates for stronger state laws regulating the workplace. Unions were front-and-center in multiple legislative campaigns for a higher minimum wage, in each repeat campaign for family and medical leave legislation, and in efforts to tamp down on employee misclassification. They were notably absent, however, in efforts to expand anti-discrimination policies to include LGBT rights—the AFL-CIO’s 2018 resolution of

support was belated and seemed controversial—and the final misclassification law was weaker than what unions had pushed for.

Organized labor’s win rate in Pennsylvania was therefore rather dismal overall, but not for a lack of trying. Although the state’s minimum wage outpaced the federal level for two years (2007 and 2008), most of the bills supported by labor were either killed or significantly watered down by the Republican-controlled Senate.

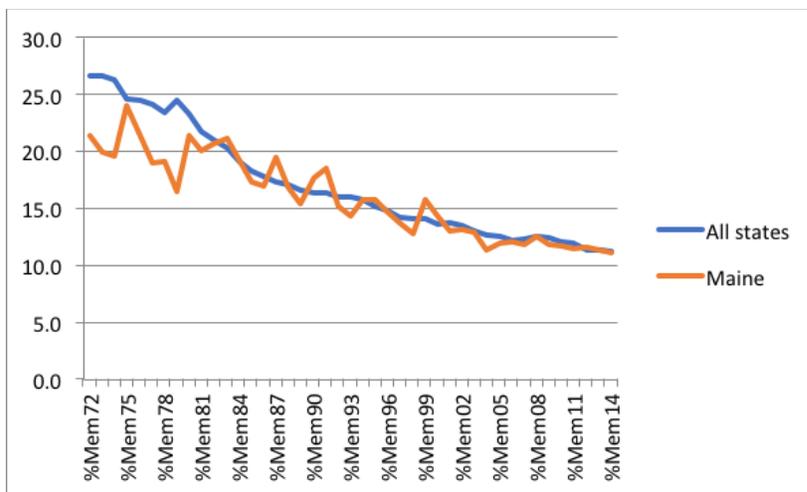
In general, this brief within-case analysis has generated ample evidence that unions did indeed work to enact many employment laws, thereby lending support to the hypothesized causal pathway and casting doubt on the notion that the statistical relationship is spurious. The complete absence of organized labor in the area of discrimination, however, reminds us of unions’ mixed history on issues of diversity and inclusion and suggests that union support for employment laws, perhaps especially in the antidiscrimination arena, is not automatic, but depends on the specific issue, union, and state. But the balance of the evidence presented above suggests that the primary reason Pennsylvania registers as a “deviant” case is due to the strength of the GOP in key institutions of government: it was clearly not due to a lack of union engagement in the legislative process.

### **Maine**

With laws covering 11 of 11 employment law categories, Maine’s employment law regime ranks as the strongest in the country. Yet the rate of union density in Maine has long been merely average. In 1972, it ranked 28<sup>th</sup> and in 2014 it was 21<sup>st</sup>. By sector, Maine’s union density was also unremarkable: in the private sector it ranked slightly below the median; in the public sector, slightly above the median. As shown in **Figure 3**,

Maine’s composite union density tracks the average of all states closely over time. This would seem to suggest that factors other than unions were more causally important in the construction of Maine’s employment laws. That said, “deviant” cases are more likely to exhibit unusual and heterogeneous causal effects, by definition (Seawright 2016a, 504). We must therefore be alert to the possibility that certain key variables, including union density, may exert unusually strong effects—perhaps through unexpected pathways.

**Figure 3: Union Density, Maine and All States, 1972-2014**



As it turns out, a quick look at the history of party politics in Maine reveals that organized labor has long enjoyed outsized influence in the state Democratic Party. In the early 1990s, when elected Democrats accepted cuts to the state’s workers’ compensation program, a rift reportedly opened between the Maine Democratic Party and organized labor. But after large losses in 1994, old conflicts were swept under the rug. “Labor leaders decided they wanted a stronger presence in the party structure,” and “party leaders were receptive to a friendly takeover... leaving unions once again with a dominant

voice in the party's affairs" (Perry 1996a). In a remarkable quote given to the *Portland Press Herald*, the state Democratic Party's executive director stated plainly that "Democrats are no longer fighting the takeover (of their party) by labor. Labor dominates now. They seem totally revived as a force in the Democratic Party" (Ibid.). Despite merely average levels of union density, then, organized labor in Maine appeared to exert outsized influence in the Democratic Party. But let us systematically consider the evidence.

### **Minimum Wage**

Historically, Maine's minimum wage has been statutorily linked to the federal minimum wage (**Figure 4**). In 1996, when the U.S. Congress raised the minimum wage in two stages (\$4.25 to \$4.75 in 1997 and \$5.15 in 1998), Maine law would have automatically increased the state minimum wage as well as the "tipped wage" to 50 percent of the federal minimum wage. A Republican-led effort to freeze the tipped wage at its previous level of \$2.13 narrowly passed both legislative houses. The state AFL-CIO reportedly opposed the freeze, and Independent Governor Angus King ultimately pocket vetoed the bill (Perry 1996b; Higgins 1996; Carrier 1996).

**Figure 4: Maine and Federal Minimum Wage, 1938-2018**



After Democrats retook control of both houses in 1997, bills to raise the minimum wage higher than the federal rate were sent to the governor in 1998, 1999, and 2000, but King pocket-vetoed each attempt, arguing that they would deter investment in the state. Without supermajorities, the vetoes were sustained. The state AFL-CIO was on the front lines of each campaign, testifying on behalf of all working people, raising issues of childhood poverty, and more (Herald 1998; Carrier 1999; Beaudoin 1999; Higgins 2000; AP 2000).

Still another attempt was made in 2001, this time to raise the wage floor to \$5.75 in 2002 and \$6.25 in 2003, with subsequent annual increases indexed to inflation. Maine AFL-CIO president Edward Gorham felt that “legislative support for an increase is stronger now than it has been in years,” but the governor was still a question mark (Carrier 2001). Working in partnership with Democratic leaders and the Catholic Church, the Maine AFL-CIO “set into motion plans for a citizens’ initiative to force a referendum [on the legislation] if King vetoes an increase, as he’s done three times in the past” (Adams 2001). The threat seemed to work, and the governor finally signed the increase.

The Senate president “credited organized labor for its advocacy of the increase, saying unions backed the measure out of a belief that ‘all workers should benefit from the New Economy,’” the *Kennebec Journal* reported (Quinn 2001).

The next major push to increase the minimum wage died in the Senate in 2010; the same bill was passed again by the Democrat-controlled legislature in 2013, but was vetoed by Republican Governor Paul LePage (Adams 2010; Stone 2013; Durkin 2015). AP reported that “business groups, including the Maine State Chamber of Commerce, restaurant and innkeepers' groups opposed the bill, while the Maine AFL-CIO, advocates for women and low-income Mainers, and the Maine Education Association teachers’ union joined supporters” (Adams 2013).

A “slew of minimum wage bills” were again introduced in 2015 and again they ran “into fierce opposition from LePage’s administration, business groups and GOP lawmakers” who controlled the Senate. The labor-led coalition called for a referendum on the issue to circumvent the Republican-led legislature and the governor and raise the minimum wage in annual steps until reaching \$12 in 2020 (Adams 2013). Organized labor was described as “gathering signatures and being a vocal supporter of the hike” (McCrea 2015; Graham 2015; Billings 2015). Said to be “spearheading” the initiative, the Maine AFL-CIO and the progressive “Maine People’s Alliance” successfully collected enough signatures to put the initiative before voters in 2016 and it passed with 55 percent of the vote (Fishell 2016). That stepwise increase constitutes the “1” Maine receives in this category.

Over the past several decades, then, organized labor consistently took a prominent role in campaigns to raise Maine’s minimum wage. In addition to whatever behind-the-

scenes influence organized labor had within the Democratic Party, the state AFL-CIO lobbied legislators and governors, collected signatures, and waged highly public campaigns while claiming to speak on behalf of all working people. In most cases, their efforts were stymied by business-friendly governors and Republican lawmakers—but in 2001 and 2015, they used referenda to successfully circumvent their opponents and enact increases.

### **Family and Medical Leave**

Maine’s Family Medical Leave law, enacted in 1988, provided workers at companies with 25 or more employees with 10 consecutive weeks of unpaid leave for the birth or adoption of a child or to care for a family member who faced “imminent danger of death.” But with over 90 percent of the businesses in Maine employing fewer than 25 employees, many workers were left without any legal right to family or medical leave (Perry 1997). The federal Family and Medical Leave Act enacted in 1993 provided an additional two weeks and permitted a wider range of medical leaves, but only applied to companies with 50 or more employees. Workers’ advocates therefore sought to enact a stronger state law that would cover more Mainers.

In 1997, advocates sought to expand coverage to businesses employing more than 15 workers, relax the existing law’s stringent medical leave standards, and increase the duration of the guaranteed leave. The law passed without receiving much coverage in newspapers (AP 1997). Organized labor’s involvement is evidenced primarily in the aftermath of the law’s passage, when unions advocated for a private right of action if workers were discriminated against for taking advantage of the Family Medical Leave law (Wolfe 1998). A few years later, the Maine AFL-CIO was reported to be part of a

coalition – including “the Maine AFL-CIO, Maine Women's Lobby, Time Warner Cable, the Maine State Chamber of Commerce and Legal Services for the Elderly” – that sought to provide same-sex domestic partners with the same family and medical leave protections as other family members (Cover 2007).

A legislative campaign to guarantee workers *paid* sick leave in the early 2000s likewise evidenced prominent union engagement. The debate was described as a “face-off” between two coalitions: the Maine AFL-CIO, the Maine Women’s Lobby, and the Maine Council of Senior Citizens were the primary proponents of the bill, while the Maine State Chamber of Commerce and the National Federation of Independent Business were opposed (Carrier 2004; Elliott 2004). The enacted bill was significantly watered down: rather than mandate paid sick leave, it merely stipulated that if employers already offered paid sick leave, their policies were now required to cover caring for family members as well (Murphy 2006; Carrier and Peters 2005).

The watered-down bill did not curb enthusiasm among workers’ advocates for mandatory earned paid sick leave. The next burst of legislative activity came in 2008-2010, when multiple bills were introduced without ultimately becoming law. During this period, labor unions’ involvement was again clearly evident: “It seems to be the decent thing to do and makes it a little easier for working mothers, particularly, and working fathers,” the president of the state AFL-CIO Ed Gorham said (Carrier 2008; Opinion 2009). Testifying before the Labor Committee in 2010, the AFL-CIO representative “said paid sick leave should be ‘a basic labor right’” (Payne 2010). Once it became clear that the bill would not be enacted, labor unions shifted focus to passing a similar law in the city of Portland (Miller 2010; Billings 2017).

In sum, every legislative campaign to bolster Maine's Family Medical Leave law evidenced prominent union mobilization alongside women's groups, senior citizen groups, and other varied interests. Taking this and the previous policy area together, it appears that organized labor's political influence in Maine may have been less a function of membership size or even clout within the party, and more a function of its ability to form broader coalitions around specific policy issues. Both cases also evidence unions' self-conscious efforts to speak on behalf of all working poor people in Maine, not just union members.

### **Discrimination**

The Maine Human Rights Act (HRA) was enacted in 1971. Between 1977 and 1993, bills to add language prohibiting discrimination on the basis of sexual orientation in employment (and in housing, education, public accommodations, and access to credit) were introduced and hotly debated nine times. None of the bills passed both houses of the legislature until 1993. That bill was supported by the Maine AFL-CIO, the Maine State Employees Association, the Maine NAACP, and the Maine Chamber of Commerce (Adams 1993). Republican Governor John McKernan vetoed it, however, and the legislature was unable to override.

Campaigns to add gay rights to the HRA persisted, however, as similar ordinances were passed in the cities of Portland and Lewiston (Hale 1995). In response, anti-gay activists succeeded in initiating a statewide referendum in 1995 in a bid to prevent municipal governments from enacting gay-rights ordinances (and to repeal existing ordinances). Opposing the referendum was a broad coalition of gay-rights supporters, including the Maine AFL-CIO, Governor King, and the Maine Chamber and Business

Alliance (Ibid.). Labor's support was prominently noted in multiple news accounts (Hale 1995; Vegh 1994; Editorial 1995; Vegh 1995). The anti-gay referendum failed (Carrier 1997).

In 1997, another version of the 1993 bill was introduced in the House. The Maine AFL-CIO testified in support, giving what was reportedly "some of the most compelling testimony...Charles O'Leary of the Maine AFL-CIO likened it to the prejudice he suffered as a Catholic boy in Bangor many years ago" (Ibid.). In a major victory, the law passed and Governor King signed it. Yet again, however, anti-gay activists initiated a referendum to overturn the law. The "opposed" coalition, "Maine Won't Discriminate," which included the Maine AFL-CIO and other labor unions and groups, led the campaign to sustain the gay rights bill, and the Service Employees International Union was listed as the largest group donor to the coalition (Nacelewicz 1998; Pochna and Nacelewicz 1998). In the end, turnout was low (only 15 percent) and the law was repealed (Moore 1998; Meara 2000). In follow-up rallies around the state, Maine AFL-CIO president said that while the issue was one of civil rights, "it's also a matter of education," and promised to continue on with the fight (Ibid.).

A similar bill was again proposed in early 2000, and again it passed and was signed by the governor. The Maine AFL-CIO helped to fund an ad campaign in support of the vote and publicly endorsed it (Carrier 2000). But as in the past, voters repealed it via referendum (Cover 2005). Still *another* attempt was made in 2005. With Democrats in control and the largest coalition of supporters yet gathered, the bill's prospects looked good. The state AFL-CIO president was reportedly "sad to have to be fighting the same battle all over again," and said: "Let's put an end to discrimination that makes life so

miserable for our brothers and sisters in Maine” (Ibid.) The bill passed and was signed by the governor (Peters 2005). Opponents again called for a referendum on the law, but this time it was sustained by the voters, 55 percent to 45 percent (Peters 2005; Adams 2005).

Quite unlike the Pennsylvania AFL-CIO, then, the Maine AFL-CIO strongly supported each and every effort to ban employment discrimination on the basis of sexual orientation. Despite multiple setbacks via referenda, organized labor and its broad coalition of allies persisted and were ultimately successful.

### **Employee Misclassification**

The illegal misclassification of employees as “independent contractors” does not appear to have been a salient political issue in Maine until 2005, when researchers at the University of Massachusetts-Boston and Harvard University conducted a study of its widespread incidence in Maine’s construction industry and presented their report to the House Labor Committee. The *Bangor Daily News* reported: “About 70 people, many of them with the logo of the Carpenters-Millwrights Local Union No. 1996 on their clothes, crammed into the State House meeting room, where researchers presented their findings.” The study emphasized the negative impact of misclassification on state revenues, business competition, and workers in terms of access to benefits and insurance, lower effective wages, and heightened vulnerability to work hazards and labor market disruptions (Trotter 2005; Turkel 2005).

The state’s largest building and trades union federation, the Maine State Building and Construction Trades Council (MSBCTC), was liberally quoted as advocating for stronger enforcement of existing laws to deter misclassification. A trade group representing commercial builders even falsely charged organized labor with

commissioning the report in order to help “expand its presence in Maine's construction industry,” thus further revealing the stake labor unions were perceived to have in the matter. The report captured the attention of the state capitol, and in 2005 Democratic Governor John Baldacci directed his Labor Commissioner to form a task force—including “contractors, organized labor, builders and insurance representatives”—to identify ways to strengthen enforcement of employment classification laws and expand educational outreach programs (Trotter 2005; Turkel 2005).

In January 2009 the Democratic governor launched another task force to further examine the problem, strengthen enforcement mechanisms, and increase public awareness of the “harms inflicted by misclassification” (Gagnon 2009b). The task force was reportedly set up “because of complaints from union groups” arguing that misclassification “undercuts union workers and union employers” (Kennebec 2011). The task force held a series of public forums around the state to discuss the issue and gather workers’ stories of being misclassified, and the Maine AFL-CIO helped by hosting a session of the task force at its biennial convention (Gagnon 2009b, 2009a). The MSBCTC president praised the work of the task force, observing that “since they put the task force together, we have seen departments working together” (Quimby 2010a, 2010b).

The status quo was upended with the 2010 election of Republican Governor Paul LePage, who abolished the task force within two days of taking office and shifted focus to legislation that would adopt the IRS definition of independent contractor for all state purposes (different standards were used for income tax, unemployment, and workers’ compensation) (Leary 2011). In 2012, the governor’s legislation passed and new

penalties (up to \$20,000) for noncompliance were added (AP 2012; Richardson 2013). Reportedly, “the measures drew opposition from Democrats and organized labor during legislative debates leading up to their passage,” apparently because the new penalties were contingent upon proving that the employer “intentionally or knowingly” misclassified employees—a high burden of proof (Adams 2012a, 2012b).

Although organized labor appears to have provided its most substantial support to administrative efforts to enforce existing laws and educate both employers and workers about the problem, the primary legislative change in this arena occurred in 2012 under a Republican governor despite resistance from labor.

## **Discussion**

In all four policy arenas – minimum wage, family and medical leave, discrimination, and employee misclassification – organized labor in Maine seemed to “punch above its weight,” given the state’s merely average rate of union density. Part of its influence surely stemmed from its clout within the Democratic Party organization. But it also appears related to the broad ad hoc coalitions of groups that labor helped to build when contesting each policy arena. Perhaps the magnitude of unions’ policy influence is partly a function of the broader coalitions it is (or is not) able to form in each policy area. Notably, the only advocacy group present in all four policy campaigns was organized labor: suggesting the centrality of labor unions within Maine’s progressive group networks.

## Conclusion

This study has examined the relationship between labor unions and the growth of subnational employment laws over the last several decades. In the first part, multiple quantitative analyses identified a strong statistical relationship, above and beyond other factors, between union density and state employment laws. States with higher rates of union density boast more robust employment law regimes: they maintain higher minimum standards for the terms and conditions of work and offer workers a wider range of substantive rights and benefits. This statistical association, however, told us nothing about the causal pathway leading from higher rates of union density to the state's propensity to enact more state-level employment laws.

In the next step, then, the quantitative analysis was used to select “deviant” cases—least-well explained by the model—for the purposes of further investigation and discovery. With Pennsylvania and Maine identified as deviant cases, systematic process tracing was employed to analyze multiple policy campaigns on behalf of four major categories of employment law over multiple decades. Across these campaigns, we searched for evidence of labor union involvement in legislative campaigns. The case studies turned up voluminous evidence that unions did indeed play an integral role in efforts to enact stronger subnational employment laws. Even when policies were not successfully enacted—and when the final bills were weaker than unions had wanted—organized labor was consistently on the front lines, pushing for the policies in both states.

This integrated mixed-method approach does not provide dispositive empirical evidence of a causal relationship or fully refute the notion that the relationship may yet be spurious in other cases. But the evidence assembled is difficult to square with alternative

causal arguments and lends support to the hypothesized causal pathway connecting unions to employment laws. Even as union density declined in every state, unions representing public and private-sector employees worked assiduously to enact many of the subnational employment laws that continue to structure and regulate the employment relationship today.

Case evidence suggests that unions were motivated to do this work for a variety of nonexclusive reasons, including strategic imperatives and their advocacy on behalf of all working people. This recalls Moore et. al's (1989, 539) observation that a top AFL-CIO officer was relieved (but not surprised) to learn that support for "government substitution hypothesis" was weak, but nevertheless noted "that even if the evidence had supported that hypothesis, the AFL-CIO would continue to support social welfare legislation that aided the working men and the poor in this country."

Two additional contributing factors (omitted variables) were also discovered in the course of the qualitative analysis: partisan control of key legislative institutions and the existence of broad, ad hoc policy coalitions. As part of an ongoing, iterative research process, future statistical analyses would need to include those variables in improved models (which would yield new cases for further study and model refinement).

With regard to the conceptualization and measurement of our key explanatory variable (union density), the Maine case also lends further support to the notion that the causal *effect* need not be commensurate with the size of the *value* on the explanatory variable. Despite Maine's average rate of union density, labor unions appeared to exert outsized influence in the legislative process. Organized labor's influence within the Democratic Party and its centrality in progressive group networks may have provided

Maine’s average-sized unions with what we might call a “streamlined causal pathway” to affecting legislative outcomes.

I hasten to add that the claim here is *not* that unions alone built state employment law regimes—as discussed, multiple factors clearly played a role in each case, and various factors interacted in important ways. At issue is the role unions did or did not play in their construction. Within each case, across multiple policy arenas and in many legislative campaigns, while other groups came and went, unions were consistently present, publicly advocating for laws to raise the minimum wage, expand workers’ rights to family and medical leave, establish stronger protections against discrimination (except in Pennsylvania), and enhance the state’s regulatory authority to prevent employee misclassification.

Taken all together, the quantitative and qualitative evidence shows that organized labor was a consistent contributing cause of these relatively durable, institutionalized rights and protections lodged at the subnational level. Even as union membership reached new lows and labor’s myriad “threat effects” vanished, these institutional achievements endured.

I hasten to add that subnational employment laws are not, of course, permanent—they can be amended or repealed—and they do not guarantee protection against exploitation. They can be (and often are) ignored by employers, under-enforced by regulatory agencies, and under-utilized by workers (Fine 2013, 2017). Increasingly, they are circumvented by mandatory arbitration agreements (Colvin 2017; Staszak 2015). And their unequal distribution across states has created a new set of geographic inequalities in workers’ rights (Aldrich 2018). In many ways, the new world of workplace governance is

inferior to the old. These tradeoffs are urgent topics for further discussion. The contribution of this study is that it advances this conversation and properly orients the scholarly debate over the relationship between unionism and state regulation. The advantage of integrated multi-method research is found precisely there: now that we have pointed the causal arrows in the proper direction, we may begin to consider the tradeoffs and pursue more nuanced inquiries into the variation that surely exists across cases. And it allows us to state with greater confidence that the new federalism in work regulation constitutes one of organized labor's most significant and consequential legacies.

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<sup>i</sup> States are scored 1 if they had a major law on the books governing each particular policy area in 2014 and 0 if there was no law. Exceptions include: *Meal period*: 1=state law covers all workers, 0.5=law applies only to minors, and 0=no law; *Child labor*: 1=employment certificate is issued by the state or a school, 0.5=employer must register the child worker or keep records, and 0=no law; *Drug and alcohol testing*: 1=state regulates broadly, 0.5=regulation of public sector only; 0=no law; *Whistleblower*: 1=public and private sector workers are covered, 0.5=either public or private sector (but not both), and 0=no law; *Employee Misclassification*: states receive 0.33 for each of the following: interagency taskforces and studies; clear and objective tests for determining employee status; sector-specific laws.