

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

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Version: January 3, 2019

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ABSTRACT

In recent decades, much of the authority to regulate the workplace has shifted from the national to the subnational level as the primary institutional bases of workers' rights have shifted from labor law to employment law. What contributions, if any, did labor unions make to this historic shift in workplace governance? Using an integrated multi-method research design, this study exploits the variation in employment laws across all fifty states and uses strategically selected case studies to facilitate discovery and probe for causal mechanisms. It finds that a strong statistical relationship between union density and the strength of state employment laws is not spurious and that even in the two "deviant" cases least-well explained by the statistical model (Pennsylvania and Maine), labor unions were consistently on the front lines pushing for stronger employment law rights and protections for all workers. In contrast to more ephemeral "union threat" effects that have vanished along with declining rates of union density (e.g., upward pressure on wages, benefits, and the moral economy), state employment laws constitute relatively durable labor market institutions. As such, they may be considered some of organized labor's most enduring legacies.

In the 1950s, over a third of the non-agricultural workforce in the United States enjoyed union representation and collective bargaining rights under national labor law, and millions more benefited from the upward pressure put on wages, hours, and other terms and conditions of employment in highly unionized areas and industries. The New Deal's collective bargaining system never reached as broadly or penetrated the workforce as deeply as its designers had hoped, but for a substantial share of American workers, collective rights were a reality, protected by a stable set of national labor market institutions.

Today, only 6.5 percent of private sector workers are members of unions. Labor law is roundly criticized as an outmoded, "ossified" policy that "more and more resembles an elegant tombstone for a dying institution" (Weiler 1983; Estlund 2002; Andrias 2016). Employers have increasingly embraced subcontracting, franchising, and supply chain models to cut labor costs and emphasize core competencies, and a downward spiral of basic labor and safety standards has resulted (Kalleberg 2011; Weil 2014). Non-standard work arrangements have proliferated, wage inequality has grown to socially intolerable levels, the moral economy of labor has collapsed, and workers in all industries have become more vulnerable to exploitation, wage theft, and discrimination, with those at the bottom of the income scale most at risk (Bernhardt et al. 2009; Western and Rosenfeld 2011; Galvin 2016).

For the vast majority of American workers in the 21st century, what precious few rights remain in the workplace derive not from *labor law*, as the New Dealers envisioned, but from *employment laws*—especially those enacted at the state and local levels (Summers 1988; Stone 1992; Bales 1993; St Antoine 2003; Sachs 2008; Andrias 2016). Protections and rights that might have otherwise been secured through union representation and collective bargaining are

now accessed principally through state regulation and private litigation—when they are accessed at all.

How did this major shift in the locus of workplace governance come to be? While a vast scholarship has examined union decline and the growing problems with labor law, the same cannot be said for the proliferation of subnational employment laws. Although many have observed their growth, explanations have been in short supply. Historical accounts, while highly valuable, have tended to be either too narrow—focused on specific locations or affected populations—or too broad, obscuring the underlying political processes of institutional change. Most others have taken the new world of employment law largely as given, and focused (quite understandably) on developing forward-looking solutions to the many problems that remain. Consequently, the factors that produced this historic sea change in workplace governance – the who, what, when, where, and how – remain something of a black box.

Legislative outcomes are famously over-determined, and in the case of employment laws, a myriad of economic, political, and social factors surely contributed to their construction. But among the “usual suspects,” the role of labor unions stands out as particularly puzzling (Dubofsky 1994; Lichtenstein 2013). Unions are widely understood to be vigorous defenders of workers’ rights in general – and we know they have long used their political clout to advocate for a wide range of universal social insurance and redistributive programs that benefit all workers. But their interest in expanding the role of the state in regulating the workplace is not self-evident. After all, in the long tradition of Gompersian workplace-centered voluntarism, state intervention was viewed with suspicion and often thought to be more of a detriment than a complement to unionization. Moreover, to the extent that government regulation “substitutes” for services that might otherwise be provided by unions, some have argued that it may reduce the incentives of

would-be members to unionize. What, then, is the relationship between the decline of labor unions and the growth of employment laws? What contributions, if any, did unions make to the historic shift in workplace governance?

The purpose of this paper is to interrogate the role unions have played in the emergence of state-level work regulation. Using an integrated multi-method research design, it exploits the variation in employment laws across all fifty states and uses strategically selected case studies to facilitate discovery and probe for causal mechanisms. Although it represents only the first step of what must necessarily be a broader study, the findings lend strong support to the notion that above and beyond other factors, labor unions played a key role in the construction of state employment laws. As we will see, their consistent and assiduous work to get such laws enacted suggests that these relatively durable labor market institutions – the vast majority of which remain on the books today – may be considered some of organized labor’s most lasting legacies.

Indeed, these findings have important implications for how we think about the contributions unions have made to the changing world of work. Recent scholarship has tended to emphasize the negative side of the equation: union decline is shown to have contributed to widening income inequality, the deterioration of the moral economy, wage stagnation, the rise of precarious jobs, the magnified political influence of corporations and the wealthy, and more (Moody 1988; Hacker and Pierson 2010; Kalleberg 2011; Western and Rosenfeld 2011; Gilens and Page 2014; Rosenfeld 2014; Rosenfeld et al. 2016; Bucci 2018). Notably, most of these “union effects” are inherently *ephemeral*—upward pressure on wages and other union-threat effects, by definition, operate only when unionization is viewed as a credible option. State employment laws, in contrast, represent union effects that are not only more positive but also far more *durable*.

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. Increasingly, they are circumvented by mandatory arbitration agreements; and as I will show, their unequal distribution across states has created a new set of geographic inequalities in workers’ rights (Staszak 2015; Colvin 2017). Indeed, in many ways, the new world of workplace governance is inferior to the old (Galvin 2017). But before we can fully weigh the tradeoffs and evaluate the consequences of the shift, we need to better understand how it came to be in the first place.

Background

Although unions are sometimes depicted as sclerotic relics of a bygone era that have failed to effectively adapt to changing conditions, a number of leading scholars has found that in many cases (but surely not all), unions have proven capable of organizational adaptation, experimentation, and strategic outreach (Voss and Sherman 2000; Milkman and Voss 2004; Milkman 2006; Dixon and Martin 2012). Moreover, many unions have exhibited a remarkable capacity to broaden their purview and promote priorities that transcend the interests of their members, self-consciously expanding their “communities of fate” to include “unknown others for whom the members feel responsibility” (Ahlquist and Levi 2013, 2). In their classic study, Freeman and Medoff (1984) found 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.

Still, skeptical scholars have periodically examined whether AFL founder Samuel Gompers' was right to fear that government intervention in the labor market could dampen workers' enthusiasm for unions. A number of studies have examined the "government substitution hypothesis" suggested by Neumann and Rissman (1984), which posits that "the provision by government of certain 'union-like' services competes with the private market provision by unions, thereby reducing the attractiveness of union membership" (Moore et al. 1989, 538). Studies have examined the relationship between union density and a wide range of state-provided "union-like" benefits, including social welfare expenditures, exceptions to at-will employment, protective employment laws, and more (Freeman 1986; Hauserman and Maranto 1988; Moore and Newman 1988; Moore et al. 1989; Bennett and Taylor 2001; Coombs 2008).

In arguably the most direct test of the government substitution hypothesis, Richard Freeman (1986) used both cross-country data and cross-state data to estimate the relationship between union density and protective legislation enacted in all 50 states. Freeman found no support for the notion that protective legislation had "adverse feedback effects on union density" and suggested that Neumann and Rissman's model was fundamentally flawed. But in a surprising twist, Freeman found much stronger empirical support for the "reverse causal link," that "more highly unionized states are, indeed, more likely to pass protective legislation" (265).

Unfortunately, Freeman's insight has not been explored much further. It remains an open question whether the positive relationship Freeman found between unionism and protective labor legislation is spurious, whether unions supported those bills and leveraged their political clout to

secure their enactment, or whether in certain areas they were more likely to oppose than welcome government intervention – as in the AFL-CIO’s work against a single-payer health care system in 1993 (Gottschalk 2000).

To be sure, the relationship between unions and protective legislation is likely complex, context-dependent, historically constructed, and not easily summarized in terms of “average treatment effects.” Yet there is value in understanding the basic contours of the relationship, if only as a starting point for further, more nuanced inquiry. The next section therefore outlines an alternative approach to the question that leverages the complementary strengths of statistical analysis and small-n case study analysis to check the assumptions of each.

Data and Methods

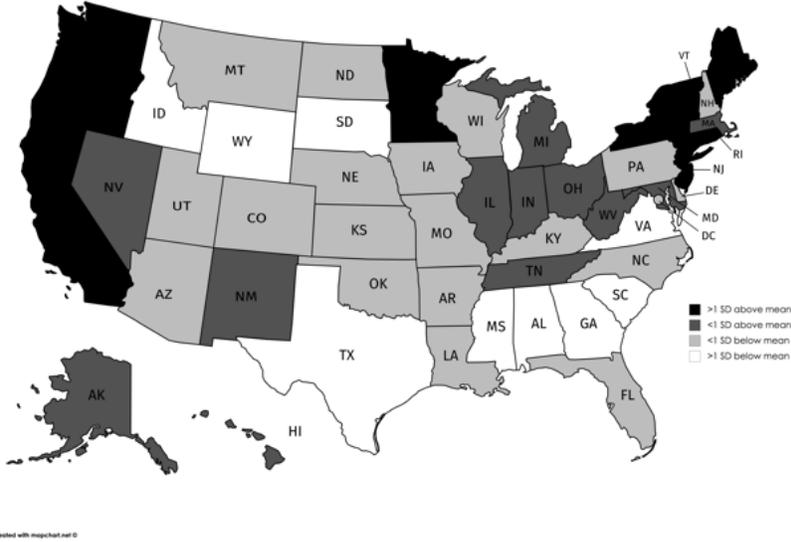
To capture variation in the strength of states’ employment law regimes, I constructed a new dependent variable whose component parts are transparent and consistent with other plausible measures of the same basic phenomenon. The variable measures the number of 11 major state-level employment laws “on the books” in each state in 2014, as tracked by two authoritative sources: the National Conference of State Legislatures (NCSL) and the Department of Labor (DOL) (**Table 1**).¹ For each of the 11 categories, states generally receive a 1 if they have a law and 0 if there is no law.² Data from each source was cross-checked against other data sources as well as online statutes to confirm accuracy. **Figure 1** illustrates the geographic variation in states’ employment law regime scores.

Table 1: State Employment Law Regime Scores: Categories and Sources

Wages	Minimum wage (DOL) Overtime (NCSL) Prevailing wage (DOL)
Hours and Leave	Family/Medical Leave (NCSL) Meal/Rest periods (DOL)
Discrimination and Retaliation	Discrimination (NCSL) Drug and Alcohol Testing (NCSL) Whistleblower (NCSL)
Terms and Conditions of Employment	Child Labor (NCSL) OSHA State Plans (DOL) Employee Misclassification (NCSL)

?

Figure 1: State Employment Law Regime Scores: Geographic Variation



Three other dependent variables, each constructed independently from the first but all theoretically measuring the same phenomenon of interest, are used as validity checks. The first is a measure all employment laws enacted in each state between 1973 and 2014 as a share of all state laws passed.³ States that pay relatively more attention employment laws are expected to have more comprehensive employment law regimes. The other two measures provide validity checks from the opposite direction, capturing the extent to which state laws are considered by employers and business advocates to be hospitable environments for investment and growth. One

uses a Chamber of Commerce study in which researchers examined 34 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 opened the door to litigation (Eisenach 2011). The other is the Index of Worker Freedom (IWF) compiled by the conservative Alliance for Worker Freedom in 2009, which tracked 15 laws that it claimed obstructed workers' freedom and drove away high-quality workers (Johnson and Hollenbeck 2009). Note that the sign is flipped on this measure. Despite their differences, the three other variables are strongly correlated with the first (see Measure 1 in **Table 3**), suggesting that they do generally capture the same phenomenon of interest.

Table 2: Correlation Matrix for Dependent Variables

<u>Dependent variables</u>	Measure 1	Measure 2	Measure 3	Measure 4
Measure 1: Employment Law Regime Score	1.00			
Measure 2: Attention to Employment Laws	0.72	1.00		
Measure 3: Chamber of Commerce Score	0.79	0.67	1.00	
Measure 4: Index of Worker Freedom	-0.83	-0.64	-0.80	1.00

To begin fleshing out the relationships, I build on Richard Freeman's (1986) model and add two politically relevant variables. The modified model estimates the following equation:

$$(1) \text{ Employment Law Regime Score} = a + b \text{ BaseUnionDensity} + c \text{ ChangeDensity} + d \text{ Unemployment} + e \text{ Income} + f \text{ EmploymentChange} + g \text{ LegislativeProductivity} + h \text{ MassEconLiberalism} + i \text{ RTW} + u$$

Explanatory variables include *BaseUnionDensity*, which measures state-level union density in the year before the period of analysis (1972) to account for different baselines or starting points, and *ChangeDensity*, which measures the percentage point change in state union density from 1973 to 2014 (higher value means less decline). *Unemployment* is the average rate of nonagricultural unemployment in the state between 1973 and 2014. *Income* measures average per-capita personal income in the state. *LegislativeProductivity* is the overall number of laws enacted by the state legislature (minus vetoes plus overrides). *EmploymentChange* is the log

change nonagricultural employment in the state during the same period. *MassEconLiberalism* is the Caughey and Warshaw (2018) measure of the mass public's economic policy liberalism. *RTW* is a dummy variable indicating whether the state was "right to work," sometimes used as a proxy for the political strength of business.

As **Table 3** shows, union density is positive and strongly related to all four dependent variables, indicating that states with higher baselines of union density also had stronger employment law regimes. The second strongest (negative) association is the right-to-work variable.

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 may 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—after all, higher levels of union density may indicate 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.

Table 3: Relationship between Union Density and State Employment Law Regime Strength

	<i>Dependent Variables</i>			
	(1) Employment Law Regime Score	(3) Attention to Employment Law	(4) Chamber of Commerce	(5) Index of Worker Freedom
Base Union Density	0.249*** (0.0653)	0.0235*** (0.00804)	0.624* (0.310)	-0.149* (0.0799)
Change in Union Density	0.207** (0.0867)	0.0149 (0.0107)	0.0699 (0.411)	-0.0647 (0.106)
Unemployment	-0.237 (0.311)	-0.0505 (0.0383)	0.372 (1.475)	-0.0429 (0.380)
Income	-1.77e-05 (0.000111)	-7.85e-06 (1.36e-05)	0.00106* (0.000524)	-0.000123 (0.000135)
Employment Change	0.617 (0.582)	0.142* (0.0716)	1.877 (2.758)	0.316 (0.711)
Legislative Productivity	8.84e-06 (3.42e-05)	-8.14e-06* (4.21e-06)	0.000284* (0.000162)	-1.85e-05 (4.18e-05)
Mass Economic Liberalism	4.886** (2.388)	0.0895 (0.294)	-6.709 (11.32)	-5.032* (2.920)
RTW	-1.248* (0.694)	-0.295*** (0.0854)	-15.91*** (3.290)	3.453*** (0.849)
Constant	3.247 (3.851)	0.579 (0.474)	31.88* (18.25)	9.235* (4.707)
Observations	50	50	50	50
R-squared	0.688	0.674	0.768	0.781

Standard errors in parentheses

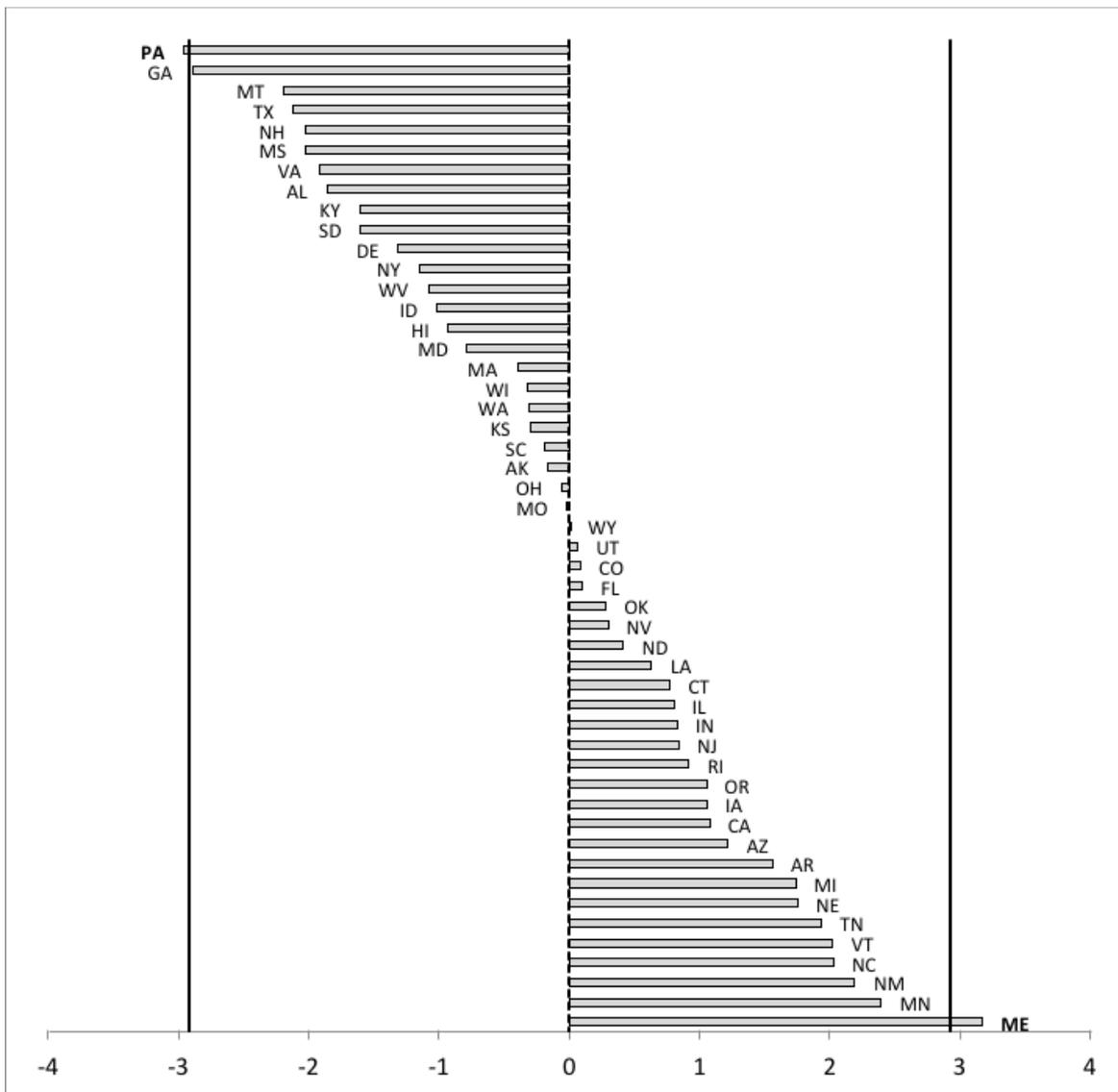
*** p<0.01, ** p<0.05, * p<0.1

To move beyond blunt statistical relationships and begin searching for answers to these outstanding questions, case studies are particularly helpful. But how to select which cases to examine? To maximize the analytical payoff, leading methodologists suggest that randomly selected cases or those that are “typical,” “most similar,” “most different,” “influential,” or “extreme-on-Y” are usually less valuable than are cases that are “deviant” (George and Bennett 2005; Gerring 2006; Seawright and Gerring 2008; Seawright 2016a, 2016b). Deviant cases are cases 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.

The procedure for identifying deviant cases is rather straightforward in no-frills regression analyses like the ones presented above. Using Model 1 in Table 3 above, 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 2** reports the residuals for Model 1, with vertical bars representing two standard deviations from the mean (zero).

Figure 2: Identifying “Deviant” Cases for Further Inquiry



Mean=0, standard deviation=1.46. Dashed lines indicate 2xSD (+/-2.92)

As shown, two deviant cases are identified, one with extremely high residuals (Maine) and one with extremely low residuals (Pennsylvania). Maine, in other words, has a stronger employment law regime than the model predicts; Pennsylvania’s is weaker than the model predicts. Case studies can therefore be used to investigate why those two states are so poorly explained by the model.

Using process tracing, we can evaluate the extent to which a given piece of evidence lends support (or not) to the hypothesized causal pathway – specifically, that *labor unions were actively engaged in legislative politics and pushed for these laws to be enacted* (Collier et al. 2004; George and Bennett 2005; Mahoney 2012). Evidence of this causal pathway would lend support to the hypothesis and bolster our confidence that the statistical relationship revealed above is not spurious. The lack of such evidence would not refute the hypothesis, but it would raise new questions about why, if the hypothesis is true, such evidence is lacking. Evidence of alternative causal processes, should they emerge, would similarly suggest alternative hypotheses to be tested further. The components of each state’s employment law regime score help us to zero in on particular legislative episodes and time periods (**Table 4**).

Table 4: Employment Law Regime Score: Maine and Pennsylvania

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

□

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

involved. Such “Type 2 errors” (falsely inferring the *absence* of labor unions when they were in fact involved) may be unlikely to occur in any case, since labor unions are usually eager to publicize their legislative activities and demonstrate their political clout to current and would-be members. Although it is of course possible, there would seem to be little reason for unions to pursue major legislative enactments quietly. “Type 1 errors,” in which we falsely claim union involvement when none existed – for example, by interpreting the statistical associations reported above as causally related – is what we are seeking to avoid through systematic case analysis.

In the following structured case studies, we seek answers to the following questions: (a) *Were unions involved* in securing the passage of the laws? (b) *How involved were they*: Were they named as key actors in all legislative campaigns, or just some? How much leadership did they exert? Did they just donate money or did they also testify, round up signatures, mobilize letter writing campaigns, and so on? Were certain types of unions more actively engaged in the legislative process than others? (c) *How pivotal were unions*, relative to other factors?

Although many state-level employment laws can trace their origins back many decades, each policy arena listed in Table 4 has been a site of ongoing political contestation and legislative debate. Our objective, then, is not to explain the origin of every law, *per se*, but rather to identify and explain the nature of labor unions’ involvement in significant legislative campaigns to establish, amend, extend, or otherwise alter the legal status quo in each of the policy areas.

Pennsylvania

Pennsylvania has historically 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 in union density over the decades, it remained in the top third of all states by 2014. Yet 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?

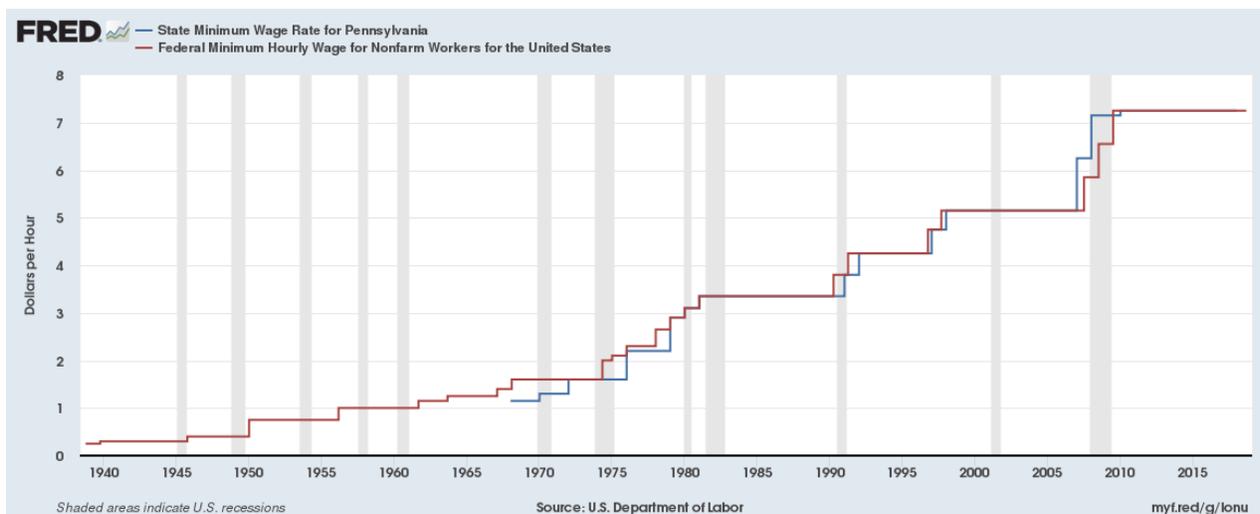
The following cases examine newspaper coverage of any and all legislative campaigns on behalf of: the minimum wage; family and medical leave; discrimination; and misclassification (one major law from each of the four major categories). The full-text search (using the Newsbank database of local papers) includes 308 Pennsylvania newspapers, with most coverage from 1978 to the present.

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 then leveled off, matching the then-increased federal rate (\$7.25), which is where both rates have remained since (see **Figure 3**).⁴ 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 3: Pennsylvania and Federal Minimum Wage, 1938-2018



The campaign to raise Pennsylvania’s minimum wage above the federal level of \$5.15 appears to have 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.⁵ 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.⁶

Both houses of the legislature were controlled by Republicans, however—indeed, Republicans 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.⁷ The bill also maintained its longstanding provision requiring that Pennsylvania keep pace with the federal minimum wage, should the federal rate be increased (thus explaining 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.⁸

The minimum wage increases thus appear to be the result of a confluence of factors: a vigorous push by a popular Democratic governor, a bipartisan coalition of support in the legislature, pressure from outside groups including organized labor, and presumably also whatever national forces were 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.⁹ Democratic politicians were responsive to organized labor’s pressure on the issue as well: in 2015, for example, 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* noted.¹⁰

Pennsylvania’s score of “0” on the minimum wage in **Table 4** cannot therefore be attributed to organized labor’s disinterest or lack of political activism in this area. Labor was present and active, vigorously pushing for wage increases on multiple occasions over the years, often against the odds. But they were stymied by what appears to be a potential omitted variable in the analysis above: Republican Party control of the state legislature. Republicans maintained formidable veto power through their nearly consistent control of the state senate and frequent although more intermittent control of the legislature. This suggests one potential 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. This outcome, however, was not due to a lack of trying. 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. 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.”¹¹

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.”¹² Heh continued to represent the AFL-CIO in supporting the legislation in 1989 alongside Marilyn DePoy of AFSCME.¹³

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.”¹⁴ The unions’ clout with Democratic members of the legislature was reported to be an important factor, but likely insufficient: “With the unions’ support, efforts to move state legislation face a better chance in the Democratic-controlled House than the Republican Senate.”¹⁵

The 1990 effort featured the same advocates and major spokespeople as in earlier years, including AFL-CIO’s Judith Heh.¹⁶ 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.”¹⁷ 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.”¹⁸ The campaign failed to overcome Republican opposition, however, and the bill died.¹⁹ It was revived in 1993 under unified Democratic government but was ultimately tabled when a similar federal law was enacted.²⁰

In the years since, legislative campaigns to strengthen family-related leave laws in Pennsylvania – 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.”²¹

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 newspaper evidence of union support for this bill either around the year of its enactment in 1955

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.²² 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 2015-16.²³

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 finally 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."²⁴

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 reportedly 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.

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.²⁵ 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.²⁶ The law required that independent contractors in the construction industry meet several tests to prove 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."²⁷ 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."²⁸ 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."²⁹

Enforcement was evidently lacking in the ensuing years, perhaps 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."³⁰ 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. In sum, although the legislation did not go as far as organized labor would have liked, there is clear evidence that labor 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 clearly 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.

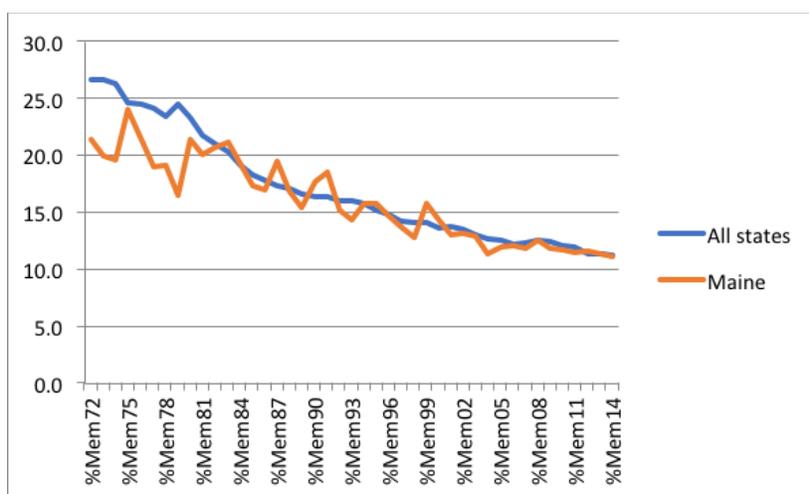
Labor’s legislative success rate in Pennsylvania was dismal, but that was not for lack of trying. Although the minimum wage was raised higher than the federal level for two years (2007 and 2008), most of the bills supported by labor were either killed, significantly watered down, or narrowed in scope 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 is not automatic, but depends on the specific issue. But the primary reason Pennsylvania registers as a “deviant” case seems to be the Republican Party’s strength 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 had the 28th highest rate of union density and in 2014 it was 21st. As shown in **Figure 4**, Maine’s union density tracks the average of all states closely over time. It is tempting, then, to assume that other factors must have been more causally important than unions in the enactment of Maine’s employment laws. But it is worth keeping in mind that the value of an independent variable does not necessarily equal the size of its causal effect. Indeed, it is precisely because deviant cases are more likely to exhibit unusual causal effects that they are useful for examining causal hypotheses and “discovering unknown sources of causal heterogeneity” (Seawright 2016a, 504). We therefore want to be alert to the possibility that key variables, including union density and other economic and political variables, exert unusually strong effects in this case.

Figure 4: Union Density, Maine and All States, 1972-2014



As it turns out, a quick look at the history of Democratic Party politics in Maine reveals that organized labor has, indeed, enjoyed outsized influence in the state party. In the early 1990s, when elected Democrats accepted cuts to the state's workers' compensation program, a rift was reported to have occurred between the Maine Democratic Party and organized labor. But when Democrats lost control the state senate in 1994 and their House majority shrunk to near parity with Republicans, 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."³¹ In a remarkable quote given to the *Portland Press Herald*, the state Democratic Party's executive director explained 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."³² Despite its merely average levels of union density, then, organized labor in Maine appeared to have outsized influence within the Democratic Party.

The following subsections examine the role organized labor played in the same four policy areas as above: minimum wage; family and medical leave; discrimination; and misclassification. The full-text search includes 23 local newspapers in Maine, with most coverage from 1992 to the present.

Minimum Wage

Historically, Maine's minimum wage has been statutorily linked to the federal minimum wage (**Figure 5**). In 1996, when the U.S. Congress raised the minimum wage in two stages (from \$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 and King ultimately pocket vetoed the bill.³³

Figure 5: 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.³⁴

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.³⁵ 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.”³⁶ 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.³⁷

The next major push to increase the minimum wage died in the Senate in 2010; the same bill was passed again in 2013, but was vetoed by Republican Governor LePage.³⁸ The *Associated Press* 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.”³⁹

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 2020.⁴⁰ Organized labor was described as “gathering signatures and being a vocal supporter of the hike.”⁴¹ 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.⁴² 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.⁴³ 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.⁴⁴ 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.⁴⁵ 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.⁴⁶

A legislative campaign to guarantee *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.⁴⁷ 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 would now have to cover caring for family members as well.⁴⁸

The watered-down bill did not curb enthusiasm among workers’ advocates for mandatory earned paid sick leave, however. 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.⁴⁹ Testifying before the Labor Committee in 2010, the AFL-CIO representative “said paid sick leave should be ‘a basic labor right.’”⁵⁰ 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.⁵¹

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, financial resources, or party clout, 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 was enacted in 1971. Between 1977 and 1993, bills to add language prohibiting employment discrimination on the basis of sexual orientation (as well as discrimination in the areas of 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 reportedly supported by the Maine AFL-CIO, the Maine State Employees Association, the Maine NAACP, and the Maine Chamber of Commerce.⁵² Republican Governor John McKernan vetoed it, however, and the legislature was unable to override the veto.

Campaigns to add gay rights to the Maine Human Rights Act persisted, however, as similar ordinances were passed in the cities of Portland and Lewiston.⁵³ 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.⁵⁴ Labor's support was prominently noted in multiple news accounts.⁵⁵ The anti-gay referendum failed.⁵⁶

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."⁵⁷ 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.⁵⁸ In the end, turnout was low (only 15 percent) and the law was repealed.⁵⁹ 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.⁶⁰

A similar bill was again proposed in early 2000, and again it passed and was signed by the governor.⁶¹ The Maine AFL-CIO helped to fund an ad campaign in support of the vote and publicly endorsed it.⁶² But as in the past, voters again repealed it via referendum.⁶³ 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.”⁶⁴ The bill passed and was signed by the governor.⁶⁵ Opponents again called for a referendum on the law, but this time it was sustained by the voters, 55 percent to 45 percent.⁶⁶

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, 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 significant 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 the 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 its negative impact on state revenues, business competition, and the costs to workers in terms of access to benefits and insurance, lower effective wages, and heightened vulnerability to work hazards and labor market disruptions.⁶⁷

The state’s largest building and trades union federation, the Maine State Building and Construction Trades Council (MSBCTC), was quoted liberally in news stories advocating for stronger enforcement of existing laws to deter misclassification.⁶⁸ 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.⁶⁹ 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 – “to include contractors, organized labor, builders and insurance representatives” -- to identify ways to strengthen enforcement of employment classification laws and expand educational outreach programs.⁷⁰

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.”⁷¹ The task force was reportedly set up “because of complaints

from union groups” arguing that misclassification “undercuts union workers and union employers.”⁷² 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.⁷³ 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.”⁷⁴

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 (really a set of rules) for determining independent contractor status for all state purposes (different standards were being used for income tax, unemployment, and workers’ compensation).⁷⁵ In 2012, the governor’s legislation passed, the IRS definition was adopted, and stiff new penalties (up to \$20,000) for noncompliance were added.⁷⁶ Reportedly, “the measures drew opposition from Democrats and organized labor during legislative debates leading up to their passage,” perhaps because the new penalties were contingent upon proving that the employer “intentionally or knowingly” misclassified employees, a high burden of proof.⁷⁷

Although organized labor appears to have provided its most substantial support to the earlier administrative efforts to enforce existing laws and educate employers and workers about the problem, the primary legislative change in this arena occurred in 2012 under a Republican governor and despite the reported resistance of 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, as noted above, the magnitude of labor unions’ policy influence is more a function of the broader coalitions it is (or is not) able to form in each area. It is notable that the only advocacy group present in all four policy campaigns was organized labor, however, indicating the centrality of labor unions within Maine’s progressive group networks.

Conclusion

This study has examined the relationship between labor unions and the historic growth of subnational employment laws over the last few decades. In the first part, quantitative analysis identified a strong statistical relationship, above and beyond other factors, between union density and the strength of state employment laws. States where labor unions were historically stronger boast more robust employment law regimes: they offer protections to workers across a wider range of substantive areas, maintain higher standards for the terms and conditions of work, and offer workers stronger substantive rights and benefits. This general statistical relationship, however, raised more questions than it answers, especially about causal pathways. Were unions instrumental in enacting these laws? Using fine-grained analysis of the two cases least-well explained by the model, the ensuing qualitative analyses uncovered voluminous evidence that unions did indeed play a central role in the construction of most of these subnational employment laws.

This integrated mixed-method approach enables us to claim with greater confidence that the statistical relationship is not spurious and to point to empirical support for the hypothesized causal pathway connecting unions and employment laws. Unions did not stand idly by as workers grew increasingly vulnerable: even as union density reached new lows, labor unions of all types worked tirelessly 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 wide variety of nonexclusive reasons, including their claim to represent all working people, their interest in attracting new members, and more. Regarding the potential tradeoff between state intervention and unionization, Moore et. al. (1989, 539) write that one top AFL-CIO officer was relieved (but not surprised) to learn that support for “government substitution hypothesis” was weak, but 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 subsequent models (which might then yield new deviant cases for further study, and so on). 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 and varied factors clearly played a role in each case, and many 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, unions were almost always present, publicly advocating and vigorously pushing for universal 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 suggests that organized labor was a consistent contributing cause of these relatively durable, institutionalized rights and protections lodged at the subnational level. Even as labor unions have continued their seemingly inexorable decline and more ephemeral union effects have vanished, these institutional achievements have endured.

References

- Ahlquist, John S., and Margaret Levi. 2013. *In the Interest of Others: Organizations and Social Activism*. Princeton: Princeton University Press.
- Andrias, Kate. 2016. "The New Labor Law." *Yale Law Journal* 126:2-101.
- Bales, Richard. 1993. "A New Direction for American Labor Law: Individual Autonomy and the Compulsory Arbitration of Individual Employment Rights." *Hous. L. Rev.* 30:1863.
- Bennett, James T, and Jason E Taylor. 2001. "Labor Unions: Victims of Their Political Success?" *Journal of Labor Research* 22 (2):261.
- Bernhardt, Annette, et al. 2009. "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities." *National Employment Law Project. New York: NELP*.
- Bucci, Laura C. 2018. "Organized Labor's Check on Rising Economic Inequality in the U.S. States." *State Politics & Policy Quarterly* forthcoming.
- Caughey, Devin, and Christopher Warshaw. 2018. "Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936–2014." *American Political Science Review* 112 (2):249-66.
- Collier, David, et al. 2004. "Sources of Leverage in Causal Inference: Toward an Alternative View of Methodology." In *Rethinking Social Inquiry: Diverse Tools, Shared Standards*, ed. H. E. Brady and D. Collier. Lanham, Md.: Rowman & Littlefield.

- Colvin, Alexander J.S. 2017. "The Growing Use of Mandatory Arbitration." *Washington, DC: Economic Policy Institute*.
- Coombs, Christopher K. 2008. "The Decline in American Trade Union Membership and the "Government Substitution" Hypothesis: A Review of the Econometric Literature." *Journal of Labor Research* 29 (2):99-113.
- Dixon, Marc, and Andrew W Martin. 2012. "We Can't Win This on Our Own: Unions, Firms, and Mobilization of External Allies in Labor Disputes." *American Sociological Review* 77 (6):946-69.
- Dubofsky, Melvyn. 1994. *The State and Labor in Modern America*. Chapel Hill: Univ of North Carolina Press.
- Eisenach, Jeffrey A. 2011. "The Impact of State Employment Policies on Job Growth: A 50-State Review." *U.S. Chamber of Commerce*.
- Estlund, Cynthia L. 2002. "The Ossification of American Labor Law." *Columbia Law Review*:1527-612.
- Freeman, Richard B. 1986. "Unionism and Protective Labor Legislation." *Industrial Relations Research Association, Proceedings*:260-7.
- Galvin, Daniel J. 2016. "Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance." *Perspectives on Politics* 14 (2):324-50.
- . 2017. "The "Changing of the Guard" from Labor Law to Employment Law." *Labor Studies Journal* 42 (3):255-60.
- George, Alexander L., and Andrew Bennett. 2005. *Case Studies and Theory Development in the Social Sciences*. Cambridge, Mass.: MIT Press.
- Gerring, John. 2006. *Case Study Research: Principles and Practices*: Cambridge university press.
- Gilens, Martin, and Benjamin I Page. 2014. "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens." *Perspectives on Politics* 12 (3):564-81.
- Gottschalk, Marie. 2000. *The Shadow Welfare State: Labor, Business, and the Politics of Health-Care in the United States*. Ithaca: Cornell University Press.
- Hacker, Jacob S., and Paul Pierson. 2010. *Winner-Take-All Politics: How Washington Made the Rich Richer and Turned Its Back on the Middle Class*. New York: Simon & Schuster.
- Hauserman, Nancy R, and Cheryl L Maranto. 1988. "The Union Substitution Hypothesis Revisited: Do Judicially Created Exceptions to the Termination-at-Will Doctrine Hurt Unions." *Marq. L. Rev.* 72:317.
- Johnson, Brian M., and Todd Hollenbeck. 2009. *2009 Index of Worker Freedom: A National Report Card*: Alliance for Worker Freedom.
- Kalleberg, Arne L. 2011. *Good Jobs, Bad Jobs: The Rise of Polarized and Precarious Employment Systems in the United States, 1970s to 2000s*. New York: Russell Sage Foundation.
- Lichtenstein, Nelson. 2013. *State of the Union: A Century of American Labor*. Rev. and expanded ed. Princeton, New Jersey: Princeton University Press.
- Mahoney, James. 2012. "The Logic of Process Tracing Tests in the Social Sciences." *Sociological Methods & Research* 41 (4):570-97.
- Milkman, Ruth. 2006. *L.A. Story: Immigrant Workers and the Future of the U.S. Labor Movement*. New York, N.Y.: R. Sage Foundation.
- Milkman, Ruth, and Kim Voss. 2004. *Rebuilding Labor: Organizing and Organizers in the New Union Movement*. Ithaca, N.Y.: Cornell University Press.
- Moody, Kim. 1988. *An Injury to All: The Decline of American Unionism*: Verso.
- Moore, William J, and Robert J Newman. 1988. "A Cross-Section Analysis of the Postwar Decline in American Trade Union Membership." *Journal of Labor Research* 9 (2):111.
- Moore, William J, et al. 1989. "Welfare Expenditures and the Decline of Unions." *The Review of Economics and Statistics*:538-42.
- Neumann, George R, and Ellen R Rissman. 1984. "Where Have All the Union Members Gone?" *Journal of Labor Economics* 2 (2):175-92.
- Rosenfeld, Jake. 2014. *What Unions No Longer Do*. Cambridge: Harvard University Press.

- Rosenfeld, Jake, et al. 2016. "Union Decline Lowers Wages of Nonunion Workers." *Washington, DC: Economic Policy Institute*.
- Sachs, Benjamin I. 2008. "Employment Law as Labor Law." *Cardozo Law Review* 29 (6).
- Seawright, Jason. 2016a. "The Case for Selecting Cases That Are Deviant or Extreme on the Independent Variable." *Sociological Methods & Research* 45 (3):493-525.
- . 2016b. *Multi-Method Social Science: Combining Qualitative and Quantitative Tools*. Cambridge: Cambridge University Press.
- Seawright, Jason, and John Gerring. 2008. "Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options." *Political Research Quarterly* 61 (2):294-308.
- St Antoine, Theodore J. 2003. "Labor and Employment Law in Two Transitional Decades." *Brandeis LJ* 42:495.
- Staszak, Sarah L. 2015. *No Day in Court: Access to Justice and the Politics of Judicial Retrenchment*. New York: Oxford University Press.
- Stone, Katherine Van Wezel. 1992. "The Legacy of Industrial Pluralism: The Tension between Individual Employment Rights and the New Deal Collective Bargaining System." *The University of Chicago Law Review*:575-644.
- Summers, Clyde W. 1988. "Labor Law as the Century Turns: A Changing of the Guard." *Neb. L. Rev.* 67:7.
- Voss, Kim, and Rachel Sherman. 2000. "Breaking the Iron Law of Oligarchy: Union Revitalization in the American Labor Movement." *American Journal of Sociology* 106 (2):303-49.
- Weil, David. 2014. *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*. Cambridge, MA: Harvard University Press.
- Weiler, Paul. 1983. "Promises to Keep: Securing Workers' Rights to Self-Organization under the Nlra." *Harvard law review*:1769-827.
- Western, Bruce, and Jake Rosenfeld. 2011. "Unions, Norms, and the Rise in Us Wage Inequality." *American Sociological Review* 76 (4):513-37.

¹ One drawback to this exclusive focus on statutes is that it omits the important regulation of work that comes from court rulings and is carried forward in common law; administrative rules; executive orders; and less formal enforcement practices. To some extent, though, those alternative sources of work regulation are endogenous to legal statutes, with each often reflecting and affecting the other.

² 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. See: <https://www.nelp.org/wp-content/uploads/Policy-Brief-Independent-Contractor-vs-Employee.pdf>.

³ Data and methods in (Author working paper, 2018)

⁴ Retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/STTMINWGPA>, September 28, 2018.

⁵ Tom Barnes, "Raising Minimum Wage Their Rallying Call," *Pittsburgh Post-Gazette*, October 19, 2005.

⁶ Ibid.

⁷ Marc Levy, “State Senate Endorses \$7.15 Minimum Wage—With Exceptions,” *Pittsburgh Post-Gazette*, June 23, 2006; Associated Press, “Senate Approves Wage Bill Legislation to Increase Minimum Wage Awaits Rendell’s Signature,” *Erie Times-News*, July 2, 2006.

⁸ *Ibid.* Also see Bill Toland, “Minimum Wage Effects Minor,” *Pittsburgh Post-Gazette*, March 4, 2008.

⁹ For example, see: Elizabeth Skrapits, “Local Activists Rally for Higher Minimum Wage,” *The Citizen’s Voice & Sunday Voice*, October 8, 2015; also Kate Giammarise, “Coalition Urges P.A. To Raise Minimum Wage—Advocates State Case to Legislators,” *Pittsburgh Post-Gazette*, March 23, 2014; Rick Bloomingdale, “Letter to the Editor,” *Delaware County Daily Times*, August 27, 2015.

¹⁰ The Morning Call and Wire Reports, “Wolf backs \$10 minimum wage,” *The Morning Call*, February 11, 2015.

¹¹ Russell Eshleman, “PA Democrats in Control—But Have Little to Show,” *The Philadelphia Inquirer*, April 12, 1993.

¹² Carmen Brutto, “Bills proposing parental leave get mixed review,” *The Patriot-News*, April 29, 1988.

¹³ Eric Conrad, “Groups Seek Parent Leave as State Law,” *The Patriot-News*, February 24, 1989.

¹⁴ *Ibid.* and Eric Conrad, “Bill for Family, Sick Leave Introduced in State House,” *The Patriot-News*, June 7, 1989.

¹⁵ *Ibid.*

¹⁶ Tom Dochat, “Advocates make case for family-care leave law,” *The Patriot-News*, March 12, 1990; Carmen Brutto, “State House Passes Bill on Job Leave,” *The Patriot-News*, September 26, 1990.

¹⁷ Carmen Brutto, “At last, breakthrough on family leave,” *The Patriot-News*, September 30, 1990.

¹⁸ Carmen Brutto, “Casey urges quick action in Senate on family leave,” *The Patriot-News*, November 1, 1990.

¹⁹ Connie McNamara, “Republicans blamed for holding up bill,” *The Patriot-News*, March 18, 1992; Frank Reeves, “Casey Sets High Sights on Jobs, Health Care, Family-Leave Bill, Campaign Financing Also in Annual Speech,” *Pittsburgh Post-Gazette*, January 27, 1993.

²⁰ Russell Eshleman, “PA Democrats in Control—But Have Little to Show.”

²¹ Megan O’Matz, “Gubernatorial Hopeful Urges Expanded Family Leave,” *The Morning Call*, February 20, 1998.

²² Diana Fishlock, “Gender identity added to discrimination policy,” *The Patriot-News*, July 31, 2003; Carrie Budoff, “Rendell broadens protection against gender-identity bias,” *The Philadelphia Inquirer*, July 29, 2003.

²³ Mark Pesto, “Pending legislation could broaden LGBT rights in Pennsylvania,” *The Pitt News*, August 24, 2015; Robert Swift, “LGBT bill faces short window to pass,” *Standard-Speaker*, September 8, 2016.

²⁴ Daniel Moore, New Battles: At State Labor Convention, Unions Confront Uncertain Future by Embracing Diversity, Technology,” *Pittsburgh Post-Gazette*, April 12, 2018.

²⁵ The Daily American, “PA House votes to limit use of independent contractors,” *The Daily American*, June 10, 2008.

²⁶ Ann Belser, “When are contractors independent?” *Pittsburgh Post-Gazette*, May 9, 2010; “New law targets misclassification,” *The Intelligencer*, October 22, 2010.

²⁷ Darwyn Deyo, "Pennsylvania officials insist law applies to 'construction industry' only," *The Mercury*, September 9, 2011.

²⁸ Martin DiGiovine, "Pennsylvania Employers to Face Possible Criminal Charges for Worker Misclassifications," *Schneider Downs*, October 20, 2010 (https://www.schneiderdowns.com/our-thoughts-on/tax/Pennsylvania_Worker_Miss).

²⁹ Darwyn Deyo, "Pennsylvania officials insist law applies to 'construction industry' only."

³⁰ The Morning Call, "DA, state senators call for enforcement of state labor law," *The Morning Call*, May 14, 2014; Tony Rhodin, "'Lack of enforcement' of construction law is focus of John Morganelli news conference," *The Express-Times*, May 13, 2014.

³¹ Nancy Perry, "Democrats see revival of labor's influence," *Portland Press Herald*, May 20, 1996.

³² *Ibid.*

³³ Nancy Perry, "Legislators debate a proposed freeze on 'tipping wages,'" *Portland Press Herald*, August 31, 1996; A. Jay Higgins, "GOP lines up to oppose minimum wage hike," *Bangor Daily News*, September 5, 1996; Paul Carrier, "King refuses to sign bill capping wages of tipped workers," *Portland Press Herald*, September 18, 1996.

³⁴ *Portland Press Herald*, "Bill passes to raise base wage 25 cents," *Portland Press Herald*, April 8, 1998; Paul Carrier, "Hearing debates raising of state's minimum wage," *Portland Press Herald*, April 7, 1999; Jack Beaudoin, "Minimum-wage bill in jeopardy," *Portland Press Herald*, May 14, 1999; A.J. Higgins, "Senate oks minimum wage rise," *Bangor Daily News*, April 1, 2000; The Associated Press, "Minimum-wage bill dies a quiet death," *Portland Press Herald*, May 25, 2000.

³⁵ Paul Carrier, "Slower economy fuels debate on minimum wage," *Portland Press Herald*, February 17, 2001.

³⁶ Glenn Adams, "Lawmakers continue push for minimum wage increase," *Kennebec Journal*, March 16, 2001.

³⁷ Francis X. Quinn, "Minimum wage bill wins final approval," *Kennebec Journal*, May 18, 2001.

³⁸ Glenn Adams, "Minimum wage at issue at State House," *Morning Sentinel*, February 19, 2010; Matthew Stone, "Unions push for Maine minimum wage hike to \$8.50," *Bangor Daily News*, March 14, 2013; Alanna Durkin, "Maine group launches bid to put minimum wage boost on ballot," *Associated Press State Wire*, April 16, 2015.

³⁹ Glenn Adams, "House gives final OK to Maine wage increase bill," *Associated Press*, April 10, 2013.

⁴⁰ Alanna Durkin, "Maine group launches bid to put minimum wage boost on ballot," *Associated Press State Wire*, April 16, 2015.

⁴¹ Nick McCrea, "Maine unions reflect on tumultuous year, prepare to support minimum wage hike," *Bangor Daily News*, October 22, 2015; Gillian Graham, "Labor Day message in Portland: Unions push for living wage," *Portland Press Herald*, September 7, 2015; Randy Billings, "Campaign for \$15-per-hour minimum wage kicks off in Portland," *Portland Press Herald*, September 28, 2015.

⁴² Darren Fishell, "Maine votes to raise minimum hourly wage to \$9 next year, \$12 in 2020," *Bangor Daily News*, November 9, 2016.

⁴³ Nancy Perry, "New state law to expand family leave," *Portland Press Herald*, July 21, 1997.

⁴⁴ The Associated Press, "Employers gird for family leave law changes," *Bangor Daily News*, July 22, 1997.

-
- ⁴⁵ Jason Wolfe, "Maine Case Sets Standard on Family Leave," *Portland Press Herald*, July 18, 1998.
- ⁴⁶ Susan Cover, "Leave bill has strong show," *Kennebec Journal*, March 1, 2007.
- ⁴⁷ Paul Carrier, "Should all employees receive paid sick time?" *Portland Press Herald*, February 27, 2004; Alan Elliott, "Sick-leave plan draws fire, praise," *Bangor Daily News*, March 3, 2004;
- ⁴⁸ Edward D. Murphy, "Not everyone likes state sick leave law," *Morning Sentinel*, March 14, 2006; Paul Carrier and Mark Peters, "Lawmakers wrap up: what the session produced," *Portland Press Herald*, June 26, 2005.
- ⁴⁹ Paul Carrier, "Insurance costs, labor rights top agendas," *Portland Press Herald*, February 24, 2008; Opinion, "A benefit for employees, customers and companies," *Journal Tribune*, December 4, 2009.
- ⁵⁰ Tony Payne, "Sick-time bill a jobs killer," *Sun-Journal*, January 31, 2010.
- ⁵¹ Kevin Miller, "Business, advocates spar over sick days," *Bangor Daily News*, January 15, 2010; Randy Billings, "With mayor's backing, labor advocates push for mandatory paid sick leave in Portland," *Kennebec Journal*, September 1, 2017.
- ⁵² Glenn Adams, "Chamber supports anti-gay legislation," *Bangor Daily News*, March 17, 1993.
- ⁵³ John Hale, "Mainers face off on gays," *Bangor Daily News*, October 28, 1995.
- ⁵⁴ *Ibid.*
- ⁵⁵ Steven G. Vegh, "New coalition promises to fight referendum against gay rights," *Portland Press Herald*, August 16, 1994; *Ibid.*; Editorial, "Vital to stop this referendum," *Portland Press Herald*, October 31, 1995; Steven G. Vegh, "Both sides claim supporters," *Portland Press Herald*, November 5, 1995.
- ⁵⁶ Paul Carrier, "Gay-rights hearing draws emotional crowd," *Portland Press Herald*, April 9, 1997.
- ⁵⁷ *Ibid.*
- ⁵⁸ Tess Nacelewicz, "Gay-rights backers raise more cash than opponents," *Portland Press Herald*, January 17, 1998; Peter Pochna and Tess Nacelewicz, "Low voter turnout could doom gay-rights law," *Portland Press Herald*, January 25, 1998.
- ⁵⁹ Roxanne Moore, "Rally, march set for tolerance," *Bangor Daily News*, October 2, 1998; *Ibid.*; Emmet Meara "Opponents clash over gay rights bill," *Bangor Daily News*, February 17, 2000.
- ⁶⁰ *Ibid.*
- ⁶¹ *Ibid.*
- ⁶² Paul Carrier, "Rights backers air first TV ad," *Portland Press Herald*, October 31, 2000.
- ⁶³ Susan Cover, "Polarized lobbies besiege Statehouse before hearing," *Morning Sentinel*, March 23, 2005.
- ⁶⁴ *Ibid.*
- ⁶⁵ Mark Peters, "Baldacci signs controversial gay-rights bill," *Portland Press Herald*, April 1, 2005.
- ⁶⁶ *Ibid.*; Glenn Adams, "Gay rights law on the books," *Morning Sentinel*, December 29, 2005.
- ⁶⁷ Bill Trotter, "Worker misclassification costs millions," *Bangor Daily News*, April 26, 2005; Tux Turkel, "Misclassifying contractors 'costly,'" *Portland Press Herald*, April 26, 2005.
- ⁶⁸ *Ibid.*
- ⁶⁹ *Ibid.*
- ⁷⁰ *Ibid.*
- ⁷¹ Dawn Gagnon, "Hearings to focus on 'misclassified' workers," *Bangor Daily News*, October 23, 2009.

⁷² “LePage working on bill to define 'employee',” *Kennebec Journal*, January 24, 2011.

⁷³ Dawn Gagnon, “Hearings to focus on 'misclassified' workers”; “Bangor forum looks at worker misclassification,” *Bangor Daily News*, November 9, 2009.

⁷⁴ Beth Quimby, “State makes progress on worker misclassification, says union chief,” *Morning Sentinel*, September 7, 2010; Beth Quimby, “Task force targets misclassification of Maine workers,” *Portland Press Herald*, September 7, 2010.

⁷⁵ Mal Leary, “LePage working on bill to define 'employee',” *Kennebec Journal*, January 24, 2011; Mal Leary, “LePage OKs - study to define - 'employee',” *Kennebec Journal*, June 27, 2011.

⁷⁶ Associated Press State Wire, “New Maine contractor law goes into effect,” December 31, 2012; Whit Richardson, “Maine simplifies legal definition of 'independent contractor',” *Bangor Daily News*, January 2, 2013.

⁷⁷ Glenn Adams, “LePage business bills see union, Dem criticism,” *Morning Sentinel*, April 19, 2012; Glenn Adams, “Maine gov signs workers comp, unemployment bills,” *Associated Press State Wire*, April 18, 2012.