

Unions Are Losing Their Decades-Long 'Right-to-Work' Fight

Mandatory fees are endangered at the Supreme Court, statehouses, and Congress.

by **Josh Eidelson**

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Last year the total share of U.S. workers who belong to a union fell to 10.7 percent, a record low. That number could go a lot lower in the next few years. Following decades of declining membership, unions face an existential crisis as [right-to-work](https://www.bloomberg.com/politics/articles/2015-04-03/rand-paul-s-favorite-union-buster) laws being pushed at state and federal levels would ban their ability to collect mandatory fees from the workers they represent, a key source of revenue for organized labor.

Once largely confined to the conservative South, right-to-work is encroaching on unions' longtime strongholds in the North and Midwest and, pending a U.S. Supreme Court ruling, could soon cover a majority of the unionized workforce in the U.S. Following a 47-year lull, six states in five years have passed right-to-work laws. "The South is clearly winning this particular civil war," says University of California at Santa Barbara historian Nelson Lichtenstein.



Data: National Right to Work Committee

In their first weeks in office, the new Republican governors of Kentucky and Missouri have already signed right-to-work laws, making them the 27th and 28th states, respectively, to ban mandatory union fees. By Feb. 16, New Hampshire's House of Representatives will vote on a proposal, endorsed by the state's Republican governor and already approved by its Senate, to become the first right-to-work state in the Northeast. In Iowa, where right-to-work is already the law, Republicans are looking to further curb unions' power with a bill restricting public employees' collective bargaining rights.



Data: National Right to Work Committee

"Organized labor—it's really the man behind the curtain in *The Wizard of Oz*," says Matt Patterson, who directs Americans for Tax Reform's Center for Worker Freedom, an anti-union nonprofit. "People aren't scared of them the way they used to be." Right-to-work is now the law in almost every state where Republicans control the governorship and the state legislature. The only exception other than New Hampshire is Ohio, where a sweeping anti-union law was successfully overturned by a referendum in 2011.

The most expansive change is likely to come from the Supreme Court, whose 5-4 conservative majority will be restored if the Senate confirms Neil Gorsuch to fill Justice Antonin Scalia's seat. Before Scalia's death last year, unions were bracing for a likely defeat in *Friedrichs v. California Teachers Association*, a case <<https://www.bloomberg.com/news/articles/2015-11-05/the-teacher-who-could-gut-unions>> brought by teachers and conservative groups who argued that mandatory union fees violate government employees' constitutional rights. Without Scalia, that case deadlocked at 4-4, but several similar suits are pending in lower courts.

Labor leaders expect the issue could reach the Supreme Court in time for a ruling this year, making right-to-work the law of the land for the entire public sector, which employs about half the 14.6 million U.S. union members. "There's not a doubt in my mind that the clock is ticking on that one," says Greg Junemann, president of the International Federation of Professional & Technical Engineers. Service Employees International Union President Mary Kay Henry, who before Scalia's death said her union was preemptively "preparing to become a voluntary organization," sent <<https://www.bloomberg.com/news/articles/2016-12-27/fear-of-trump-triggers-deep-spending-cuts-by-nation-s-second-largest-union>> staff a memo after Donald Trump's election win announcing that the union would plan for a 30 percent cut in its budget, almost all of which comes from dues and fees.

Unions have been trying to get ahead of the challenge. Since 2013 staff members and activists from the 1.6 million-strong American Federation of State, County, and Municipal Employees have conducted 600,000 one-on-one conversations with workers covered by AFSCME contracts. AFSCME officials say they reached a sobering conclusion in 2015 about how the workers it represents might behave under right-to-work: While roughly 35 percent would likely pay dues no matter what, about half could be "on the fence." The remaining 15 percent or so would likely not pay dues under right-to-work. "We've found that at times we were treating all of our 1.6 million members as if they were activists, and they aren't," says AFSCME President Lee Saunders. "We were taking some things for granted."

AFSCME says it's overhauled how it communicates with workers, including targeting its e-mails and Facebook ads so those who are lukewarm on the union are more likely to get information about obtaining a free associate's degree through the union than to see a call to action with an upraised fist.

**Biggest drops
in unionization
Since 2000**



Data: Bureau of Labor Statistics

The unionization rate in right-to-work states is less than half <http://www.epi.org/publication/right-to-work-states-have-lower-wages/> the rest of the country's. Organizers say letting workers decline to pay fees defunds unions, diverts staff resources that could otherwise be devoted to growth, and divides workers—just as Congress intended when it passed the 1947 Taft-Hartley Act allowing states to pass right-to-work laws. By 1964, 20 states had banned mandatory fees. After that the map stayed nearly static for almost half a century, with just three more states passing right-to-work and one repealing it.

Then, after the 2010 midterm elections, unions' flagging political clout and Republicans' newfound dominance in state government ushered in a surge of right-to-work laws, beginning in 2012 in Indiana and spreading to onetime union bastions Michigan and Wisconsin. Each new law lets conservatives in neighboring states claim they need to follow suit to compete for business. And labor's failure to deliver on promises to oust right-to-work backers has helped embolden Republicans elsewhere.