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NOTES

PRIVATE SECTOR UNIONIZATION: ITS IMPORTANCE FOR MAINTAINING A HEALTHY ECONOMY AND THE NEED TO COMBAT THE DECLINE IN UNIONIZATION RATES

Olivia Gray

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NOTES

PRIVATE SECTOR UNIONIZATION: ITS IMPORTANCE FOR MAINTAINING A HEALTHY ECONOMY AND THE NEED TO COMBAT THE DECLINE IN UNIONIZATION RATES

Olivia Gray[*]

I. INTRODUCTION

Unions are an important part of the workforce in both the public and private sectors.[1] Unionization, specifically in the private sector, substantially impacts the United States economy. As such, unionized workers directly impact the economy in a variety of ways, largely due to the various benefits of union membership such as increased wages for union workers, less turnover of employees, and higher productivity.[2] These benefits, which can differ from union to union, are achieved by workers collectively bargaining for them with employers.[3] The benefits received by union members allow merchants to generate higher earnings. As a result, those merchants participate in the economy to a greater extent, which allows the economy to grow and flourish. Union members also pay more taxes.[4] When workers pay more taxes, the result is an increase in money re-entering the economy.[5] A

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[1] Laura Feiveson, *Labor Unions and the U.S. Economy*, U.S. DEP'T OF THE TREASURY (Aug. 28, 2023), https://home.treasury.gov/news/featured-stories/labor-unions-and-the-us-economy.

[2] *Id.*

[3] AFL-CIO, *What Unions Do*, https://aflcio.org/what-unions-do.

[4] Aaron Sojourner & Jose Pacas, *The Relationship between Union Membership and Net Fiscal Impact*, HUM. CAP. & ECON. OPPORTUNITY GLOB. WORKING GRP. (Jan. 17, 2018), https://hceconomics.uchicago.edu/news/research-spotlight-relationship-between-union-membership-and-net-fiscal-impact.

[5] *Id.*

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final major impact of unions is that businesses that hire union workers ultimately save money on contracting jobs, which is strongly supported by the construction industry.[6] This is due to the tendency of union workers to endure more intensive training during apprenticeships, which results in tasks getting done quicker and at a lower cost to the business.[7] As a result, these businesses increase participation in the economy, which is necessary for economic growth.

Therefore, it is important to ensure that private sector unionization remains strong and protected. However, a decrease in private sector unionization and collective bargaining power has been a consistent trend in the past few decades.[8] This decrease in unionization is harmful for the economy as a whole and private sector workers.

Unions lead to extraordinary benefits for the economy. The continuous decline in membership appears to show no sign of stopping absent intervention. Solutions need to be found and implemented to reverse this trend in order to promote growth and prosperity in the economy. The current state of unions in the private sector makes it clear that there is a need for a dramatic increase in unionization, which can be accomplished through the abolition of right-to-work laws.

II. AN INTRODUCTION TO UNIONS: THE BASICS OF UNIONS AND THEIR HISTORY IN THE UNITED STATES

First, it is important to understand the basics of unions and how they operate. Unions are organizations that form when groups of workers unite to advocate for themselves as a collective unit.[9] The collective ability of employees to advocate for themselves and optimal working conditions is important because it allows for employees to have strength against their employers regarding work-related issues.[10] It is a way for the balance of

[6] *Report Shows that Union Contractors Add Value, Reduce Project Costs, Mitigate Project Risks*, MECH. CONTRACTORS ASS'N OF AM. (Oct. 28, 2022), https://www.mcaa.org/news/independent-project-analysis-study/.

[7] *Id.*

[8] Anna Stansbury & Lawrence Summers, *The Declining Worker Power Hypothesis: An Explanation for the Recent Evolution of the American Economy*, 2020(1) BROOKINGS PAPERS ON ECON. ACTIVITY 1, 3 (2020).

[9] American Federation of State, County & Municipal Employees, *What is a Union?*, https://local3295.org/what-union.

[10] AFL-CIO, *supra* note 3.

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power to be divided equally between employers and employees. Points of advocacy for employees could include negotiating wages, improving workplace safety, expanding employee benefits, along with many other points of contention in the workplace.[11] An important difference between unions in the public sector as opposed to the private sector is that public sector unions are organizations that represent employees employed by public or government entities.[12] On the other hand, private sector unions are organizations that represent employees employed by non-governmental, private employers, or privately owned companies.[13]

Unions assist in creating a space where employees' voices can be heard and real advocacy may occur, ensuring that management does not partake in unfair treatment practices.[14] Individually, workers tend to fail to have enough power to bargain with their employer and, as a result, find themselves beholden to an employment contract that the individual finds exploitative.[15] When these individuals join with others who share similar interests to collectively bargain as a union, the equalization of the balance of power between employees and employers enables workers to effectively advocate for improved working conditions. Research completed by the Federal Reserve determined that while non-union workers are more likely to ask for raises or promotions, union workers are more likely to receive raises and promotions.[16] This supports the conclusion that collective bargaining is much more powerful than a single individual asking for change. It is important to note that collective bargaining is a civil right that is protected by the National Labor Relations Act ("NLRA"), specifically for private sector workers.[17] The NLRA excludes public sector unions and instead focuses on protecting private sector workers' right to unionize and advocate for better working

[11] *Id.*

[12] *Public Sector Unions Summary*, OPEN SECRETS, https://www.opensecrets.org/industries/indus?ind=P04.

[13] Americans for Fair Treatment, *Public vs. Private Sector Unions* (June 3, 2024), https://americansforfairtreatment.org/2024/06/03/public-vs-private-sector-unions/.

[14] American Federation of State, County & Municipal Employee, *supra* note 9.

[15] Emergency Workplace Organizing Committee, *Collective Bargaining: How Workers Negotiate a Winning Union Contract* (Sept. 24, 2026), https://workerorganizing.org/collective-bargaining-agreement-negotiations-negotiate-contract-workers-wages-benefits-strike-6768/.

[16] Kabir Dasgupta & Zofsha Merchant, *Understanding Workers' Financial Wellbeing in States with Right-to-Work Laws*, FIN. & ECON. DISCUSSION SERIES (Sept. 8, 2023), https://www.federalreserve.gov/econres/notes/feds-notes/understanding-workers-financial-wellbeing-in-states-with-right-to-work-laws-20230908.html.

[17] Emergency Workplace Organizing Committee, *supra* note 15.

conditions without a fear of retaliation from their employers.[18] Overall, unions assist workers in attaining higher wages, better benefits, and safer workplaces.[19] All of these factors can act as incentives for others to join the workforce and ensure the safety of those who do.

Unions employ a democratic system.[20] Union leaders are elected by union members, and those leaders then advocate on behalf of all union members.[21] The Department of Labor, which oversees and regulates unions, employs strict standards for these elections to ensure fairness in the election process and the utilization of a fully democratic system.[22] This is done primarily through the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), which specifically governs the inner-workings of private sector unions.[23] The LMRDA specifies the elected positions that must be filled, the frequency of elections, and nomination procedures, which allows for uniformity and an efficient system of fairness.[24]

Ultimately, there are two ways to form a union.[25] A minimum of two workers is required for unionization.[26] First, workers can petition to form a union and notify the National Labor Relations Board ("NLRB").[27] If 30% of all workers employed by the business sign either a card or a petition, then the NLRB will conduct an election.[28] To do so, agents of the NLRB will work to reach an agreement with the employer, potential union members, and other parties to determine where and when the election will take place and who will be eligible to vote.[29] If the majority of votes in the election are in favor

[18] National Labor Relations Board, *National Labor Relations Act*, https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act.

[19] AFL-CIO, *supra* note 3.

[20] *Id.*

[21] *Id.*

[22] U.S. Dep't of Labor, *Electing Union Officers*, https://www.dol.gov/agencies/olms/compliance-assistance/elections.

[23] *Id.*

[24] *Id.*

[25] National Labor Relations Board, *Your Right to Form a Union*, https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/employees/your-right-to-form-a-union.

[26] AFL-CIO, *Your Rights to Unionize*, https://aflcio.org/formaunion/rights-unionize.

[27] National Labor Relations Board, *supra* note 25.

[28] *Id.*

[29] National Labor Relations Board, *Conduct Elections*, https://www.nlrb.gov/about-nlrb/what-we-do/conduct-elections.

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of forming a union, then the NLRB will certify the union as the representative for collective bargaining with the employer.[30]

However, an election is not always necessary to form a union.[31] Unions may also be formed if the employer voluntarily recognizes the union as the collective bargaining representative when there is evidence from workers that this is the desire of the majority.[32] This evidence typically comes in the form of signed union-authorization cards.[33]

Unions have long struggled to combat inaccurate negative perceptions that are often perpetuated by employers who either disapprove of unions or do not understand their purpose.[34] One such common misconception is that unions provide protections for low performing workers, but this is categorically untrue.[35] Becoming a member of a union still requires workers to maintain accountability for performing their job responsibilities at a satisfactory level just like non-unionized workers.[36] If a worker's performance falls below a satisfactory level, management has the same amount of power to address the issue and reach an appropriate solution as would occur in a non-unionized workplace.[37] A collective bargaining agreement simply ensures that union members cannot be fired without just cause; it does not make it impossible to fire employees represented by a union.[38]

In 1964, Carroll Daugherty, a distinguished labor arbitrator, established a seven-part test to determine whether just cause was present to justify the firing of a union employee.[39] This test requires determining whether (1) fair notice was provided to the employee, (2) there has been prior enforcement of the rule or standard violated by the employee, (3) the employee's due process rights have been respected, (4) there is substantial evidence of the charges

[30] National Labor Relations Board, *supra* note 25.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] Roy E. Bahat & Thomas A. Kochan, *How Businesses Should (and Shouldn't) Respond to Union Organizing*, HARV. BUS. REV. (Jan. 6, 2023), https://hbr.org/2023/01/how-businesses-should-and-shouldnt-respond-to-union-organizing.
[35] AFL-CIO, *supra* note 3.
[36] *Id.*
[37] *Id.*
[38] Union Plus, *Benefits of Union Membership*, https://www.unionplus.org/page/benefits-union-membership.
[39] The Union for Everyone, *The Seven Tests of Just Cause*, https://www.ueunion.org/stwd_jstcause.html.

against the employee, (5) there is equal treatment, (6) progressive discipline has occurred where the employee has been given an opportunity to improve unless the employee's conduct was egregious, and (7) the discipline is proportional to the offense.[40] If just cause is present after considering these seven factors, then it is appropriate for a union employee to be terminated.[41] Therefore, being a member of a union does not provide a free pass and free protections to allow a worker to slide by and retain their job if they are not performing up to standards. Rather, unions simply ensure employees are not terminated for illegitimate reasons.

It is also common, especially in the private business sector, for unions to be cited as the cause for a business's decline or issues on the management side.[42] However, research has shown that this is not the case, and there are no demonstrated substantial negative effects that unions have on a business to be legitimately held responsible for the business's dislocation or decline.[43] There is a lack of data showing that there are any negative implications for employers or management caused by employees unionizing.[44] Rather, unions have the potential to benefit employers since union-member employees are more likely to be satisfied with their working conditions and to be more productive.[45] Unionized workplaces are also safer and have less turnover, which lowers costs for employers.[46]

Union membership reached its peak in the 1950s when about one-third of the U.S. workforce was organized in unions.[47] This number has dramatically dropped and was at its lowest in 2023 with only 10% of the workforce unionized.[48] There is a drastic difference in the unionization numbers between public sector and private sector unions although both

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[40] *Id.*

[41] *Id.*

[42] John DiNardo & David S. Lee, *Do Unions Cause Business Failures?*, NAT'L BUREAU OF ECON. RSCH. (Mar. 2003), https://www.princeton.edu/~davidlee/wp/unionbf.pdf.

[43] *Id.*

[44] AFL-CIO, *supra* note 3.

[45] *Id.*; Union Plus, *supra* note 38.

[46] AFL-CIO, *supra* note 3; Union Plus, *supra* note 38.

[47] Feiveson, *supra* note 1.

[48] Ted Van Green, *Majorities of Adults See Decline of Union Membership as Bad for the U.S. and Working People*, PEW RESEARCH CENTER (Mar. 12, 2024), https://www.pewresearch.org/short-reads/2024/03/12/majorities-of-adults-see-decline-of-union-membership-as-bad-for-the-us-and-working-people/.

sectors are seeing a decline overall.[49] It is important to note that it is true that there was some growth in union membership rates in absolute terms. However, there was an overall decline in union membership as a percentage of the workforce.[50] A more in-depth discussion of this issue will be addressed in the next section.

III. THE PRESENT-DAY STATE OF PRIVATE SECTOR UNIONS

Over the past fifty years, the ability of workers to pursue unionization and collective bargaining has continued to decline in the absence of any labor laws that provide assistance in increasing membership.[51] This is vastly contrary to the public sector, which currently maintains a 32.2% union membership rate, while the private sector has dropped to a mere 5.9% which is a record low.[52] There are three distinct factors that have contributed to this decline.[53]

The first of these factors is policy changes.[54] Legislation and policies have increasingly become more supportive of the management and corporation side and less supportive of unionization.[55] This has resulted in a reduction of unionization, a lessened ability for workers to legitimately leverage any bargaining power in private companies, and a decrease in the real value of minimum wage.[56] The second factor is changes on the management side.[57] There has been a consistent increase in shareholder power which has resulted in companies feeling pressure to cut labor costs, typically by reducing wages and subcontracting labor that was previously done by company employees.[58] The third and final factor is economic

[49] Heidi Shierholz et al., *Workers Want Unions, but the Latest Data Point to Obstacles in their Path*, ECON. POL'Y INST. (Jan. 23, 2024), https://www.epi.org/publication/union-membership-data/.

[50] U.S. Chamber of Commerce, *Union Membership Reaches Another Record Low in 2023*, https://www.uschamber.com/employment-law/unions/union-membership-reaches-another-record-low-in-2023.

[51] Lawrence Mishel et al., *Explaining the Erosion of Private-Sector Unions*, ECON. POL'Y INST. (Nov. 18, 2020), https://www.epi.org/unequalpower/publications/private-sector-unions-corporate-legal-erosion/

[52] U.S. Dep't of Labor, *Union Members—2024*, https://www.bls.gov/news.release/pdf/union2.pdf.

[53] Stansbury & Summers, *supra* note 8.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

changes due to an increase in labor competition from technological advancements and countries with lower wages, which affects the demand for U.S. labor and broadens employers' outside options for labor.[59]

There are many narratives that have been pushed as explanations for why there has been a decrease in unionization, many of which are endorsed by the employer-side.[60] These narratives are used as a way for management supporters to make it appear like workers desire to get rid of unions or that unions no longer have a place in the workforce and economy.[61] A common explanation for the decrease in unionization is that unions no longer fit in the modern robust economy that has been pushed by innovation and automation, resulting in a decrease in manufacturing.[62] However, this explanation would not be applicable for most private sector unions as this information is supported by data from the Economic Policy Institute ("EPI") which assessed manufacturing's role in declining unionization rates.[63] EPI's analysis of union rate decline and the rate of erosion of manufacturing employment revealed that only a little over 3% of the overall nearly 16% decline in private sector unionization in recent years was attributed to the erosion of manufacturing.[64] While this percentage is not trivial, it certainly would not be fair to say that the decrease in need for manufacturing labor is primarily responsible for the major decline in unionization rates.[65]

A second commonly pushed narrative for the sharp decrease in unionization is that workers no longer desire to be in unions in the private sector and that active unions are no longer seeking new members.[66] However, this is simply not the case. Unions have continued to reach out for more members and have fought to grow and gain more bargaining power against employers.[67] A study published in Cornell's *Industrial and Labor Relations Review* analyzed whether workers still want unions or have any desire to join a union.[68] The survey was conducted in which workers were asked whether

[59] *Id.* at 4.
[60] Mishel et al., *supra* note 51.
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] Thomas A. Kochan et al., *Worker Voice in America: Is There a Gap between What Workers Expect and What They Experience?*, 72(1) INDUS. & LAB. REL. REV. 3 (2019).

they wanted to be unionized.[69] Nearly half of the non-unionized respondents reported that, if they had the opportunity to do so, they would vote to unionize.[70] If that percentage of non-union workers were given the opportunity to unionize, nearly 58 million Americans would be added to the unionized workforce.[71] There is clearly an unmet demand for unionization, but it is quite difficult to meet this demand due to the strenuous legal standards that must be met to form a union and the successful employer opposition to unionizing.[72] Employers often utilize many strategies, sometimes those that are illegal, to stop workers from forming a union.[73] These could include asking other employees to dissuade fellow workers from unionizing, offering benefits such as promotions in exchange for not unionizing, or questioning employees to make them doubt that joining a union could be beneficial.[74] Unions began experiencing difficulties with recruiting new members when they started facing this type of fierce opposition from management and failed to receive any support from the legislature.[75] It was not the case that workers no longer wanted unionization or that unions failed to recruit. Rather, the lack of opportunities and opposition from employers has been and still is the major cause of the decline in unionization that has continued for decades.[76]

Not only is there an overall decline of union membership in the private sector, as it has decreased from its peak in the 1950s at over 33% to about 6% currently, but there has also been a decline in the union wage premium.[77] The union wage premium is the difference between the earnings of union workers compared to the earnings of non-union workers.[78] In other words, it is the earnings advantage for union workers.[79] While analyzing the effects that unions and labor organizations have on the economy, the U.S. Department of the Treasury reported that the union wage premium is one of

[69] *Id.* at 19–20.
[70] *Id.* at 20.
[71] *Id.* at 23.
[72] *Id.* at 30.
[73] Bahat & Kochan, *supra* note 34.
[74] *Id.*
[75] Mishel et al., *supra* note 51.
[76] *Id.*
[77] Stansbury & Summers, *supra* note 8, at 4.
[78] Tony Fang & John Hartley, *Evolution of Union Wages and Determinants*, IZA INST. OF LAB. ECON., May 2022, at 2.
[79] *Id.*

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the most cited and well-known benefits of union membership.[80] This report also determined that the union wage premium results in a nearly 15% higher wage for unionized workers, which can be even higher for tenured workers.[81] A union wage premium not only benefits union workers but also non-union workers.[82] When union workers earn significantly more than non-union workers, it results in a "spillover effect" where non-union wages also increase.[83] The Department of the Treasury discussed in its report that for every one percentage increase in wages for union workers, non-union workers' wages increase by 0.3 percentage points.[84] Therefore, a decrease in unionization affects all U.S. workers and has the potential to reduce every worker's wages, negatively impacting the economy. It is important that unions receive more protection, particularly from the government, to combat such negative impacts.

The National Labor Relations Act is a federal law that is meant to protect workers' rights to unionize and perform collective bargaining.[85] While the LMRDA discussed above governs the internal workings of unions, the primary purpose of the NLRA is to govern relations between the employer and employees. In the past ninety-five years, every legislative change that has been made to the NLRA has created fewer protections for workers and made it more difficult to unionize.[86] Specifically, the passing of the Taft-Hartley Act restricted the power of labor unions by allowing "employer free speech," which permits employers to express their views on unionization and grants states the power to pass right-to-work laws.[87] Allowing employers to exercise free speech with regard to unionization often allows those employers to successfully oppose unionization. The negative impacts of right-to-work laws will be addressed in a later section.

There have been multiple instances throughout the years in which presidents, the Senate, and members of the House of Representatives have pushed to make changes to the NLRA that would increase and strengthen the

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[80] Feiveson, *supra* note 1.
[81] *Id.*
[82] Lawrence Mishel, *The Enormous Impact of Eroded Collective Bargaining on Wages*, ECON. POL'Y INST. (Apr. 8, 2021), https://www.epi.org/publication/eroded-collective-bargaining/.
[83] *Id.*
[84] Feiveson, *supra* note 1.
[85] 29 U.S.C. §§ 151–169.
[86] Mishel et al., *supra* note 51.
[87] *Id.*

protection of collective bargaining rights and unions as a whole.[88] However, every attempt to do so in the past fifty years has been blocked, and the amendments to the NLRA have continued to shift in favor of management and employers.[89] Leaving unions with fewer protections and the legislature's consistent favoring of the employer-management side for decades results in broad sweeping negative effects in terms of wages for all, and, as a result, the economy as a whole.

IV. UNIONS MAKE THE ECONOMY STRONGER

Statistics show that unions work for the economy.[90] The United States Treasury Department recently released a report on labor unions and their impact.[91] The report highlighted that unions serve to boost the economy by strengthening the middle class.[92] The Treasury concluded that unions reduce inequality, especially in terms of wages, and also allow for a variety of other benefits, such as increased productivity and greater worker empowerment.[93] As discussed above, compared to non-unionized workers, unionized workers tend to see an increase in their wages of about 10-15%.[94] Unionization expands prosperity beyond the management and heads of corporations and, as the U.S. Treasury reports, ensures greater well-being of union workers and their families due to increased wages, better health coverage, and greater retirement benefits among many other non-monetary benefits.[95]

One way in which unions spur growth in the economy is through their attempts to eliminate income inequality.[96] When the income of the middle class grows, it provides the middle class with the opportunity to spend the excess income on more than just the necessities.[97] This could include things

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[88] *Id.*

[89] *Id.*

[90] Steven Greenhouse, *How Unions Work for the Economy*, THE CENTURY FOUND. (Nov. 16, 2022), https://tcf.org/content/report/how-unions-work-for-the-economy/.

[91] Feiveson, *supra* note 1.

[92] *Id.*

[93] Sachin Shiva, *4 Ways Unions Make Our Economy and Democracy Stronger*, THE CENTURY FOUND. (July 11, 2024), https://www.americanprogress.org/article/4-ways-unions-make-our-economy-and-democracy-stronger/.

[94] U.S. Dep't of the Treas., *Labor Unions and the Middle Class* (Aug. 2023), https://home.treasury.gov/ system/files/136/Labor-Unions-And-The-Middle-Class.pdf.

[95] Feiveson, *supra* note 1.

[96] Greenhouse, *supra* note 90.

[97] *Id.*

like vehicles, fuel, or appliances.[98] The middle class's ability to spend more affects the entire economy because there is more money to be spent across a variety of industries.

Additionally, the "spillover effect," which causes an increase in wages for non-union workers in the same industry due to the incentive to maintain competitive wages with union workers, also contributes to lessening inequality across both union and non-union sectors.[99] This enables more American workers to receive higher wages, which spurs economic growth. The U.S. Treasury Department has reported that increases in wages for a variety of workers, both union and non-union, lead to greater prosperity for workers' families, better housing situations, and more access to investment in education.[100] Additionally, reducing inequality allows for greater access to the acquisition of job skills and the ability to start businesses.[101] The Joint Economic Committee of the U.S. Congress has reported that these benefits of unionization are experienced by both union and non-union workers and highlighted the importance of supporting workers' rights to organize to create significant economic benefits throughout the broader economy.[102]

At one point, unions represented 33% of all American workers, allowing for a massive expansion of the middle class and, in turn, a boost in the economy.[103] Now that number is down to just 10% of American workers.[104] Policy shifts have continued to favor shareholder power and management, which has overall diminished worker power, resulting in decreased unionization and major destructive consequences for the labor market and economy as a whole.[105] For many years, there has been an attack on unions that has been accompanied by weak labor laws that do not allow for robust enough protections.[106] A discussion of the policy shifts, especially in terms of right-to-work laws and their negative implications on unions, and in turn the economy, will be discussed in the next section.

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[98] *Id.*
[99] U.S. Dep't of the Treas., *supra* note 94.
[100] *Id.*
[101] *Id.*
[102] Joint Economic Committee, *Unions Provide Major Economic Benefits for Workers and Families* (June 10, 2022), https://www.jec.senate.gov/public/index.cfm/democrats/2022/6/unions-provide-major-economic-benefits-for-workers-and-families.
[103] Shiva, *supra* note 93.
[104] *Id.*
[105] Stansbury & Summers, *supra* note 8, at 63.
[106] Shiva, *supra* note 93.

V. AN INTRODUCTION TO RIGHT-TO-WORK LAWS

Many workers are making efforts to join unions. However, certain laws have made present day unionizing increasingly difficult. Right-to-work laws are passed at the state-level through the state legislature to protect employees from forcefully joining a union.[107] States were given the power to enact right-to-work laws through federal law upon the passing of the Taft-Hartley Act.[108] Currently, twenty-six states have passed right-to-work laws.[109] These laws create a clear distinction between union membership and union representation.[110] As a member of a union, an employee will pay union dues, participate in elections, and maintain representation by the union during contract negotiations.[111] An employee can still be represented by a union but not be a member, and in such a case, a union can charge those employees a fee.[112] However, in states that pass right-to-work laws, a union is not permitted to charge those who are not members any type of fee, even if the employee is represented by the union.[113] This allows workers to opt out of paying any union dues but still be able to retain all the benefits that come from the collective bargaining agreement.[114] In other words, right-to-work laws allow those who oppose union membership to avoid paying dues to the union but still receive all the benefits the union has to offer.[115]

Such laws serve to increase income inequalities and worsen working environments.[116] This hurts unions financially and, in turn, lessens a union's ability to organize workers and provide benefits to its workers.[117] The design of right-to-work laws results in decreased union power and workers' abilities

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[107] National Conference of State Legislatures, *Right-To-Work Resources* (Dec. 19, 2023), https://www.ncsl.org/labor-and-employment/right-to-work-resources.

[108] Shierholz et al., *supra* note 49.

[109] National Conference of State Legislatures, *supra* note 107.

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] Dasgupta & Merchant, *supra* note 16.

[115] *Id.*

[116] Jennifer Sherer & Elise Gould, *Data Show Anti-Union 'Right-to-Work' Laws Damage State Economies*, ECON. POL'Y INST. (Feb. 13, 2024, 3:56 PM), https://www.epi.org/blog/data-show-anti-union-right-to-work-laws-damage-state-economies-as-michigans-repeal-takes-effect-new-hampshire-should-continue-to-reject-right-to-work-legislation/.

[117] Nicole Fortin et al., *Right to Work Laws, Unionization, and Wage Setting*, NAT'L BUREAU OF ECON. RSCH. (June 2022), https://www.nber.org/papers/w30098.

to join unions.[118] The Federal Reserve studied the effects right-to-work laws have on unionization rates and found that in 2022, states that had passed right-to-work laws had a unionization rate of 6%, which was less than half of the unionization rate of states without right-to-work laws.[119]

Right-to-work laws also diminish collective bargaining power by prohibiting union security clauses within collective bargaining agreements.[120] Union security clauses require all employees covered by the collective bargaining agreement to support the union by being a legitimate member and paying union dues.[121] Given that right-to-work laws make it illegal to require workers who are not union members to pay union dues, it is impossible to include such clauses in states that pass these laws.[122] This makes it much more difficult for workers to organize and ultimately sustain their union.[123]

The National Bureau of Economic Research analyzed right-to-work laws in 2022 and found they diminish unionization rates by 4% within five years in addition to decreasing wages by 1%.[124] These laws have been proven to both decrease the number of workers in the state who join unions and cause a decrease in wages, yet they still remain in effect today.[125] Employment benefits that employees receive are also significantly reduced.[126] Both state and federal policies have a direct impact on unionization rates and workers' access to joining unions, as seen through the passing of the Taft-Hartley Act and states subsequently passing right-to-work laws.[127] Allowing workers to refuse to pay dues to unions but retaining representation and all the benefits of collective bargaining agreements is harmful.[128]

In consideration of the impacts increased unionization can have on the economy, the negative effects of right-to-work laws far outweigh their positive impacts for working people and the economy. To ensure unions can

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[118] Shierholz et al., *supra* note 49.
[119] Dasgupta & Merchant, *supra* note 16.
[120] Sherer & Gould, *supra* note 116.
[121] National Labor Relations Board, *Employer/Union Rights and Obligations*, https://www.nlrb.gov/about-nlrb/rights-we-protect/your-rights/employer-union-rights-and-obligations.
[122] Sherer & Gould, *supra* note 116.
[123] *Id.*
[124] Fortin et al., *supra* note 117.
[125] Dasgupta & Merchant, *supra* note 16.
[126] *Id.*
[127] Shierholz et al., *supra* note 49.
[128] Fortin et al., *supra* note 117.

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thrive, allowing the economy as a whole to thrive, right-to-work laws at the state level need to be repealed.

VI. CONCLUSION

Unions are important entities that have proven to provide benefits to union members and all American citizens due to the positive, wide-reaching impacts unions have on the economy. Even the United States Treasury itself has reported that unions positively impact the economy, work to reduce inequality, improve workplace satisfaction, and increase wages for all American workers.[129] At one point, private sector unionization rates were 33%, and the economy ran well in conjunction with such a rate.[130] Inequality was lessened overall, allowing many more Americans to prosper. Now, private sector unionization is down to a mere 6%, with workers' rights becoming increasingly less protected.[131]

Accompanying this decline are false narratives and misrepresentations that are often pushed by employers and management, which make it difficult to increase unionization rates. A lack of protection from the government and successful employer opposition to union formation make it difficult to fight this decline in union power. In addition to federal law failing to provide adequate protection to unions, states continue to pass right-to-work laws, which, as the Federal Reserve determined, further restrict the power of unions and decrease unionization rates.[132]

If this decline continues, unions are at risk of abolition or becoming completely powerless, which would negatively impact all American citizens. One way to begin improving the current state of private sector unions is to focus on increasing funding for the National Labor Relations Board. The NLRB works to protect union workers and ensure fair working practices, but it is severely underfunded.[133] Voting for legislators who will promote greater funding for the NLRB could combat this issue, as Congress has not increased

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[129] Feiveson, *supra* note 1.
[130] Stansbury & Summers, *supra* note 8, at 4.
[131] *Id.*
[132] Dasgupta & Merchant, *supra* note 16.
[133] Aurelia Glass, *The NLRB Protects Workers' Right to Organize, Yet Remains Underfunded*, CTR. FOR AM. PROGRESS (Dec. 5, 2022), https://www.americanprogress.org/article/the-nlrb-protects-workers-right-to-organize-yet-remains-underfunded/.

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funding to the NLRB for over a decade.[134] This makes it very difficult for the NLRB to reach its full potential.[135] Another important focus needs to be repealing right-to-work laws to ensure that unions can begin to earn back the power they need to ensure their survival and the protection of worker rights. These types of affirmative actions and push for union protection can help the U.S. economy flourish.

[134] *Id.*
[135] *Id.*

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