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The right to work really means the right to work for less

Why business interests have spent 70+ years crusading for right-to-work laws.

By Elizabeth Tandy Shermer April 24

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Over the past several years, billionaires have donated millions to the right-wing Midwestern governors pushing for state right-to-work laws, while at the same time bankrolling the current Supreme Court case, *Janus v. AFSCME*, which will determine whether public employee unions can require dues from nonmembers to support union activities from which all employees benefit.

Their efforts are not the product of a post-Citizens United landscape, but rather part of a decades-long project. For more than 70 years, supposedly nonpartisan groups, big businesses, wealthy donors and small firms have been devoting time and money to guarantee that Americans would have the right to work — for less.

So-called right-to-work laws have always been sold as all-American protections of individual freedoms. But they are in fact dangerous, confusing restrictions on Americans' basic rights on the job. These statutes empower employers by undermining workers' right to organize and rolling back the gains — better wages, working conditions and hours — that unions fought to secure.

Franklin Roosevelt signed the National Labor Relations Act, commonly known as the Wagner Act, in 1935 to recognize employees' right to organize. If a majority of eligible employees joined a union, that local would have federal recognition, something that greatly aided members' ability to collectively bargain for fair contracts with managers. This legislation democratized factories, inspired industrial workers to overwhelmingly support the president's 1936 reelection bid and gave two generations of working-class Americans middle-class lifestyles and the free time to actively participate in civil society, particularly through their unions.

Business groups, which have long supported management's right to rule on the job and in politics, immediately set to work trying to dismantle the Wagner Act. Initially some employers ignored or challenged the entire law. After the Supreme Court upheld the legislation in 1937, small business owners and top executives across the country tried to undermine it through state "labor peace" or "employment peace" acts, which limited labor rights and restricted union-shop clauses (which require all eligible employees to join the local) in the name of tranquility and prosperity.

By 1944, businesses of all sizes hit on a new solution in their fight against the Wagner Act: pushing the first right-to-work referendums in Florida, Arkansas and California.

Right-to-work laws undermined unions by outlawing seemingly obscure, often confusing contract clauses governing union negotiations. U.S. labor law dictates that nonunion members are covered by the contract that members negotiated and are also represented by the union during managerial disputes. But union negotiations require time and resources, which necessitate dues. "Union-shop" rules ensure everyone who benefits from the union helps pay for it (rather than free-ride on the contributions from others as happens without such membership provisos). Right-to-work laws effectively ban these rules, regardless of what management agrees to and what the majority of a union wants.

Few lawmakers, even in Southern and Southwestern legislatures, considered passing these proposals in the 1940s and 1950s because their constituents considered labor rights sacrosanct. Union members and their allies warned that the right to work really would just give citizens the right to starve, because union-shop clauses were critical to stopping the free-riders who weakened their efforts.

Undaunted, right-to-work proponents shrewdly turned these bills into ballot initiatives. Local civic organizations and Chamber of Commerce affiliates vastly outspent the labor movement on newspaper and radio ads warning that these propositions would free workers from union bosses intent on keeping them from having the freedom to choose whether to be in a union or not. They had powerful allies: American Farm Bureau Federation, National Association of Manufacturers, U.S. Chamber of Commerce, National Labor-Management Foundation, DeMille Political Freedom Foundation and Christian American Association.

These conservative groups, small-business owners and CEOs never advertised their involvement in those early referendums. They understood how toxic that might be. Many also remained hesitant to discuss their involvement with the National Right to Work Committee, the purportedly nonpartisan organization that these moneyed interests created in 1955 to harness the resources of the many organizations and businesses across the country fighting to pass right-to-work laws.

The ballot initiatives passed in Southern, Mountain West and Southwestern states. But voters rejected them in Midwestern, Northeastern and Pacific Coast states. As such, NRTWC redirected its vast resources from the political

arena to a hefty legal defense fund that shifted the right-to-work battle into the courts, where the billionaires behind the case's rapid path to the Supreme Court have kept it.

These efforts have worked: The Supreme Court has extended the restriction on union shop rules to "agency shop" clauses, like the one at issue in this case. (The plaintiff in the case, Mark Janus, is an Illinois employee and not a member of AFSCME but was required to pay fees to the organization.) These stipulations require nonmembers to pay a percentage of union dues to cover their fair share of the union's legal responsibility of having to bargain and uphold a contract for every eligible employee. In the early 1960s, the justices ruled that such clauses were illegal in states that had already passed right-to-work laws (even if those statutes did not expressly prohibit fair-share arrangements). A decade later, the court allowed public employee unions to negotiate such protections in non-right-to-work states, which is why the issue is again in front of the court.

Right-to-work laws and fair-share fee restrictions did a lot to undermine the larger struggle for a more democratic, equitable America. Before the NRTWC moved this fight into the courts in the late 1950s, these laws only passed in the Southern and Western states infamous for their voting restrictions. The 1965 Voting Rights Act in fact focused on many of those areas as needing special restrictions on how local officials conducted elections.

Unsurprisingly, that right-to-work belt was also infamous for its low wages. Right-to-work membership restrictions made it difficult to form unions, bargain with managers or even keep enough members to retain the federal recognition that had enabled so many blue-collar Americans to exercise their power to collectively bargain for white-collar living standards and to actively participate in politics.

Midwestern states only started to join that impoverished archipelago in the 2010s. After almost 50 years of largely confining the right-to-work fight to the courts, Republican legislators and governors, like Wisconsin's Scott Walker, in those heavily gerrymandered states quickly passed these laws at the behest of billionaire donors. They didn't dare put the issue before Rust Belt voters who still cherish their rights on the job and have vigorously protested these restrictions. Then, to avoid confronting angry workers, they used redistricting and new voting restrictions, including ID laws to shield themselves from vulnerability.

With the 2018 midterm and 2020 presidential elections looming, Americans should keep in mind how much American business interests have spent to guarantee the right to work for less and limit democracy on the job and on Election Day. Wages, working-conditions and voter participation remain higher in non-right-to-work states.

But these days when Americans think about threats to democracy, they focus mostly on Russian interference in recent and coming elections. That thinking misses that the homegrown threat may be more subtle, but no less grave. Long before the Supreme Court's 2010 Citizens United decision spotlighted the issue by unleashing a flood of big business money in politics, wealthy citizens from all over the country funded the right-to-work campaigns

intended to undermine the unions that blue-collar Americans used to protect their rights on the job, improve their living standards and participate in civic life.

That money has done much to influence politics at all levels, sowing a distrust in government among working- and middle-class Americans and leaving this country's institutions vulnerable to the very foreign threats that now dominate the news. But until these domestic threats share the front page with those foreign ones, we won't truly be able to safeguard our democracy.

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