



MACKINAC CENTER
FOR PUBLIC POLICY

Right-to-Work is Right for Michigan

My name is Steve Delie, and I am the Director of Labor Policy at the Mackinac Center. I'm here today to discuss HB 4004 and 4005, which would repeal Michigan's right-to-work laws in both the public and private sector.

Background on Right-to-Work

To understand the debate about HBs 4004 and 4005, it is important to understand the precise legal effect of right-to-work laws. Simply put, right-to-work prevents unions from forcing an employer to fire an employee who refuses to financially support the union. Senate Bill 116 of 2012, part of the bill package that made Michigan a right-to-work state, reads as follows:

- (1) An individual shall not be required as a condition of obtaining or continuing employment to do any of the following:
 - (A) Refrain or resign from membership in, voluntary association with, or voluntary financial support of a labor organization.
 - (B) Become or remain a member of a labor organization.
 - (C) Pay any dues, fees, assessments, or other charges or expenses of any kind or amount or provide anything of value to a labor organization.
 - (D) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or employees represented by a labor organization.¹

Prior to right-to-work, Michigan's labor law authorized what is known as "union security agreements." These agreements required all workers to financially support the union that represents a group of similarly situated employees known as a collective bargaining unit.²

¹ "Michigan Senate Bill No. 116" (State of Michigan, Dec. 11, 2012), § 14, <https://perma.cc/584Y-H4BC>.

² Most employees never get a chance to decide which union will represent them. Unions do not need to get reelected to maintain their status in a workplace; once a union is voted in by a group of workers, it tends to remain as the only union that can represent employees, including all future employees who never voted for the union. A competing union could challenge the existing one in a unionization election, but these challenges are rare. One study found that only 6% of unionized employees voted for unionization during their careers and remained at the company at which they voted. James Sherk, "Unelected Representatives: 94 percent of Union Members Never Voted for a Union" (The Heritage Foundation, August 30, 2016), <https://www.heritage.org/jobs-and-labor/report/unelected-representatives-94-percent-union-members-never-voted-union>.

Unionized employees had only one method of limiting their support for a union with which they disagreed: a 1988 U.S. Supreme Court decision gave employees the ability to opt out of supporting specific political spending by their union. See *Communications Workers of America v Beck*, 487 US 735 (1988). Employees exercising these “Beck rights” would, however, still have to pay the portion of dues meant to support all union activities determined to be nonpolitical. That portion of dues is known as an “agency fee.” Unions could, and did, force employers to fire employees who refused to either become a dues-paying member of the union or pay these agency fees.³ Right-to-work put an end to this practice by preventing employees from being fired for refusing to join or financially support a union.

HB 4004 is Facially Unconstitutional

Before discussing more common arguments against right-to-work, I’d like to point out that HB 4004 is unconstitutional on its face. In 2018, the United States Supreme Court decided *Janus v AFSCME*, 138 S Ct 2448 (2018), which upheld public employee’s First Amendment rights to not pay a union as a condition of their employment. The *Janus* court found that all activity by public-sector unions, including representational activities, shape matters of public policy and, as a result, are inherently political. *Id.* at 2486. The Court concluded:

“Neither an agency fee nor any other payment to the union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by ‘clear and compelling’ evidence. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.”

Id. at 2486 (internal citations omitted). In light of the above, HB 4004 has no legal effect. Employees who work for the state of Michigan, its municipalities, its schools, its police and fire departments, or any of its other government subdivision remain free to refuse to pay a union without losing their jobs.

³ Opting to only pay agency fees did not provide substantial financial relief to workers, as these fees typically amounted to 70-90% of the full dues amount. David Eggert, “Michigan right-to-work Q&A: Dissecting the ins and outs of contentious issue” (MLive.com, Dec. 11, 2012), <https://perma.cc/8GF6-6XDO>; Tom Gantert, “MEA Agency Fees Far Exceed Cost of Contract Negotiations” (Michigan Capitol Confidential, Mackinac Center for Public Policy, Nov. 11, 2013), <https://perma.cc/W96H-UGD4>.

Benefits of Right-to-Work

The evidence shows that right-to-work is popular, and is tied to improved economic outcomes. It also leads to better union representation for those employees within a bargaining unit.

A. Economic Benefits

Research from across the country has examined the economic benefits of right-to-work laws. This research shows that economic factors and in-migration are strong correlated with right-to-work laws. The following serves as a few key examples:

- Right-to-work states have long been doing better economically. For decades, they have been seeing better job growth, faster income growth and more population growth than states which require people to be union members or fee payers.⁴
- 867,104 people moved from states without right-to-work protections to right-to-work states from 2020 to 2021.⁵
- In October 2022, the unemployment rate in right-to-work states was 3.4%, but in forced unionization states it was 3.9%.⁶
- In recent years, since the COVID-19 pandemic hit the United States, right-to-work states have more than fully recovered their initial job losses. Right-to-work states have added 1.6 million jobs in the past two years, a 2.1% increase. Forced unionization states, on the other hand, have lost 809,000 jobs, a 1.1% decrease.⁷
- A 2021 Harvard study found that the share of manufacturing employment was 28% higher in right-to-work states than non-right-to-work states they bordered. Importantly, they also find that “wages and labor compensation do not appear to be lower on average.”⁸
- Research published in 2022 shows that the share of manufacturing employment in border counties in states that adopted right-to-work after 2000 is nearly 21% higher in 2018 than it would have been absent the law. In Michigan and Indiana, the share of manufacturing employment in a given county was 26% and 27% higher, respectively, than it would have been absent a right-to-work law.⁹

Right-to-work is also crucial to the continued growth of Michigan’s economy specifically. Data from the period pre-dating right to work, and the period following its adoption, show trends supportive of right-to-work:

⁴ <https://www.mackinac.org/V2014-20>.

⁵ <https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html>.

⁶ <https://www.bls.gov/lau/>.

⁷ <https://www.bls.gov/sae/>.

⁸ <https://scholar.harvard.edu/files/matthew-lilley/files/long-run-effects-right-to-work.pdf>.

⁹ <https://www.mackinac.org/archives/2022/s2022-03.pdf>

- From January 2002 to December 2012, Michigan’s unemployment rate averaged 8.5%. From January 2013 to October 2022, the most recent month, Michigan’s unemployment rate averaged 6.0%. And that includes the huge spike after the nation’s strictest lockdown.¹⁰
- The Michigan labor force was down 350,657 over the nine years prior to RTW, a 7.0% decline. It was up 90,648 people in the nine years after, 1.9% increase.¹¹
- Michigan lost 379,400 jobs in the 9-years prior to RTW and added 155,100 jobs in the nine years after. Michigan was had added even more jobs prior to the pandemic—404,400 to be precise.¹²
- Inflation-adjusted average incomes rose 0.6% in the nine years before RTW and 21.9% in the nine years after RTW.¹³
- Michigan lost 120,401 people over the nine years prior to RTW and added 130,060 people in the nine years after.¹⁴
- The state budget, excluding federal revenue and the small amounts of local and private funding, was down 17.9% in the ten years prior to RTW, when adjusting for inflation. The inflation-adjusted budget was up 15.3% in the ten years after passing RTW.¹⁵

These factors support retaining right-to-work as Michigan continues to recover from the pandemic. If the legislature wants to support Governor Whitmer’s mission to make Michigan competitive in the global economy, it should resist the urge to repeal right-to-work.

B. Right-to-Work Makes Unions More Responsive to Membership

Another benefit of right-to-work is the incentives it places on unions to better serve their members. In a non-right-to-work state, unions can require workers to become members or pay agency fees. This dampens a union’s need to be responsive to the interests of its members. This is particularly true of agency fee payers, who typically do not have the ability to vote on union leadership or contracts based on their status as nonmembers. Thus, in non-right-to-work states, the group of workers most likely to disagree with a union are also the least likely to be able to affect changes in union policy.

Right-to-work changes this dynamic, as employees cannot be coerced into financially supporting a union. In these states, unions must work harder to retain members and minimize the number of employees who choose not to financially support them. This incentivizes unions to be responsive to the needs to their members, to better serve them and to take positions that most members support. As a result, workers, whether members or not, are likely to receive better representation

¹⁰ <https://www.bls.gov/lau/>.

¹¹ <https://www.bls.gov/lau/>.

¹² <https://www.bls.gov/sae/>.

¹³ <https://www.bea.gov/data/economic-accounts/regional>.

¹⁴ <https://www.census.gov/programs-surveys/popest.html>.

¹⁵ <https://www.senate.michigan.gov/sfa/StatewideBudget/StatewideBudget.html>.

in right-to-work states compared to states where there is no connection between a union's efficacy and its funding.

Even unions have admitted that right-to-work has required them to provide better services to their members. Speaking to the Livingston Daily in 2013 about the impact of the newly passed right-to-work law, Douglas Pratt, the then-member benefits director for the Michigan Education Association, stated:

"We don't know what to expect. What we can do is continue to explain to our members why membership is of value. Have we had to increase efforts on that? Sure we have. We're stronger because of it..."¹⁶

Pratt is not alone in recognizing that unions must work harder for their members after Michigan adopted right-to-work. In the same article, Bill Reed, the then-president of UAW Local 602, stated that the passage of right-to-work "awakened a sleeping giant," by requiring unions to work harder on member retention.¹⁷

Other union leaders across the country have recognized that right-to-work made it easier for them to organize new workplaces. Gary Casteel, a former regional director for the United Auto Workers, explained his reasoning to the Washington Post in 2014:

This is something I've never understood, that people think right-to-work hurts unions. To me, it helps them. You don't have to belong if you don't want to. So if I go to an organizing drive, I can tell these workers, 'If you don't like this arrangement, you don't have to belong.' Versus, 'If we get 50 percent of you, then all of you have to belong, whether you like to or not.' I don't even like the way that sounds, because it's a voluntary system, and if you don't think the system's earning its keep, then you don't have to pay.¹⁸

Even union leaders recognize that right-to-work benefits workers through improved services that unions are incentivized to supply. Those who want to ensure employees receive the best representation possible should look to right-to-work as a tool to encourage that representation.

C. Public Popularity

Repealing right-to-work is also extremely popular, even across party lines. Right-to-work has strong support across Republicans, Democrats, Independents, men, and women. The support held for every age group and in every region of Michigan. Union household supported the law by a nearly 2-to-1 margin (55% to 28%).

¹⁶ Lindsay VanHulle, "Little changes after a year right-to-work laws were passed" (The Livingston Daily, Dec. 9, 2013), <https://perma.cc/2P6K-4TDW>.

¹⁷ Lindsay VanHulle, "Little changes after a year right-to-work laws were passed" (The Livingston Daily, Dec. 9, 2013), <https://perma.cc/2P6K-4TDW>.

¹⁸ Lydia DePillis, "Why Harris v. Quinn isn't as bad for workers as it sounds" (The Washington Post, July 1, 2014), <https://perma.cc/WU9D-XOZQ>.

A poll from Target Point Consulting found that 58% of voters support the right-to-work law, while only 29% oppose it. Support for the law was strong across most demographics. 71% of Michigan Republicans and right-leaning independents favor the law, as do 66% of Independents. Democrats and left-leaning independents also support the law, with 46% in favor and 40% opposed. Similarly, 46% of citizens who voted for Gov. Gretchen Whitmer favor the law, while 40% oppose. Even voters who belong to labor unions favor the state's right-to-work law. 60% of all union members are in favor and 34% opposed. Those who are members of teachers' associations are narrowly in support, 49%-47%.¹⁹

A poll from the Glengarriff Group commissioned by the Detroit Regional Chamber found that only 29% of people supported overturning Michigan's right-to-work law. 50% of people were neutral or undecided and 22% were opposed. Only 33% of "strong" or "lean" Democratic voters and 38% of union voters were supportive of overturning the law. Those polled were also read a list of policy priorities from the incoming Democratic Legislature and only 4.5% picked "repeal Michigan's right-to-work law" as their top priority; 6th out of the 7 policy options they were given.²⁰

A survey from the Democratic firm Public Policy Polling commissioned by the liberal activist group Progress Michigan asked Michigan voters whether they support, oppose or aren't sure about a series of policy issues the Legislature could tackle in 2023. 42% supported repealing the state's right-to-work law with 30% who "strongly support" and 12% "somewhat support" doing so. This compares to 26% who would keep the law and 31% who say they are not sure. Of the 12 policy issues asked about in its poll, repealing Michigan's right-to-work laws was the least popular, and by a significant margin. This comes even with the polling sample being skewed in at least one important way. According to the poll's demographic section, 40% of those being polled were in a household with a current or former union member. In Michigan, only 13.3% of workers are members of a labor union.²¹

This popularity has been consistent in the past decade. In 201w, Michigan voters had the opportunity to vote on Proposition 2, which would have made a RTW law unconstitutional in Michigan. That measure failed 57% to 42%.²² There were four polls on the issue of right-to-work in December 2012, the month it was passed into law. Polls from EPIC/MRA and Mitchell Research right before the law was passed, found support was at 54%-40% and 51%-41%, respectively.²³

Right-to-work is a consistently popular policy, supported by a majority of Michiganders. The legislature should not repeal this policy, which benefits special interest groups more than it benefits workers.

Right to Work Gives Workers a Fair Choice

¹⁹ <https://www.mackinac.org/blog/2023/polls-on-michigans-right-to-work-law>.

²⁰ <https://www.mackinac.org/blog/2023/polls-on-michigans-right-to-work-law>.

²¹ <https://www.mackinac.org/blog/2023/polls-on-michigans-right-to-work-law>.

²²

[https://ballotpedia.org/Michigan_%22Protect_Our_Jobs%22_Amendment,_Proposal_2_\(2012\)](https://ballotpedia.org/Michigan_%22Protect_Our_Jobs%22_Amendment,_Proposal_2_(2012)).

²³ See, <https://www.michigancapitolconfidential.com/18091>; and

<https://www.michigancapitolconfidential.com/18091>.

In both the public and private sectors, workers should be free to make their own choices about union representation. If a worker wants to join a union, they should be free to do so. If a worker doesn't want to join a union, they should be free to make that choice.

A common argument against right-to-work is that it is unfair and forces unions to represent non-paying workers. This situation, however, goes both ways. In a state without right-to-work protections, workers who don't support a union have no choice but to pay a union or lose their job. There are a host of reasons that may motivate workers to make this choice

Why Workers Might Choose to Not Support a Union

A worker may choose not to join for a variety of reasons. They may not think their union is an effective advocate, and that their dues don't justify the services they are receiving. They may disagree with a union's political positions. They may be upset with union leaders due to scandals like the one that the UAW recently suffered. Although it is impossible to understand the universe of factors an employee may consider when deciding whether to be a union member, some examples help to illustrate why repealing right-to-work runs contrary to worker freedom.

A. Political Spending that is Contrary to their Beliefs

Political spending is a particularly divisive issue. The Michigan Education Association, for example, has spent \$15.6 million dollars on political candidates and causes in the past 28 years.²⁴ \$11 million of that was spent on Democratic candidates, while \$634k was spent on Republicans. A teacher who considers themselves a conservative might object to that pattern of spending as not reflecting their values.

Private-sector unions are also active in politics. Over the same 28-year period described above, the UAW spent \$42 million on politics.²⁵ Of that spending, Democrats received almost \$25 million, while Republicans received only \$13,350. Unless literally 99.5% percent of UAW's membership identify as Democrats, one could understand why members may not want to support the union.

Repealing right-to-work would force workers to support, whether directly or indirectly, a message they may find completely antithetical to their moral, religious, or personal beliefs. Public sector workers are protected by *Janus*, but the principles underlying that decision should be applied equally to the private sector by maintaining right-to-work.

B. Union Leadership has Proven Itself Untrustworthy

The scandals that have affected the UAW in recent years provide another example of why repealing right-to-work would be unjust. A federal investigation into corruption within UAW leadership revealed that over a million dollars of members' dues had been spent on renting villas in Palm Springs, California, lavish dinners, golf equipment and greens fees, cigars, and top-shelf

²⁴ <https://www.followthemoney.org/entity-details?eid=20240>.

²⁵ <https://www.followthemoney.org/entity-details?eid=20718&default=contributor>.

liquor.²⁶ The investigation led to raids on the homes of top UAW officials and embezzlement convictions against twelve union leaders.²⁷

Another example can be seen in the case of our client, Jim Shake.²⁸ Shake was an actuary at UAW headquarters who was told he had to contribute to “Local X” in 2014. Supposedly, Local X was a local UAW affiliate. But there is no evidence the local ever existed. Shake never attended or even heard about any meeting, or knew of any contract negotiation, or employee representation. A search of federal labor filings, IRS returns, and other records failed to turn up any evidence of Local X’s existence. Shake paid over \$7,500 to the UAW, and he is now suing to recover what he paid. It isn’t clear how many other employees fell victim to this scheme.

C. Represented Workers Do Not Believe Union Membership Provides Sufficient Value

Other workers may choose to withdraw support because their union offers them insufficient value. Prior to Michigan adopting right-to-work, the Mackinac Center uncovered a unionization scheme known as “dues skim” involving the SEIU.²⁹ The union worked with the administration of Gov. Jennifer Granholm to unionize home health care workers. These workers were typically the family of seriously ill or disabled people who qualified for Medicaid support. For the care they provided, these family members received modest government subsidies.

The SEIU and Granholm administration classified these workers as state employees, even though they were really employed by the patients they cared for. This allowed home health care workers to be unionized and forced to pay dues to the SEIU. These caregivers received no representational services from the union, however, because there was no employer with whom to bargain. The union, nevertheless, siphoned over \$33 million from these Medicaid payments — money meant to care for the sick and disabled.

After the Michigan Legislature and Gov. Snyder ended the dues skim by clarifying that these workers were not state employees, the SEIU launched a ballot initiative, known as Proposal 4 of 2012, to enshrine dues skim into the Michigan Constitution. That initiative failed, with 56% of voters rejecting it.³⁰

No longer under obligation to pay the union, workers fled the SEIU in droves. By 2020, SEIU Michigan lost 51% of its total membership, and SEIU Healthcare Michigan lost 84%.³¹

²⁶ <https://www.detroitnews.com/story/business/autos/2019/09/12/uaw-presidents-gary-jones-dennis-williams-implicated-in-federal-probe/2302410001/>.

²⁷ <https://www.nytimes.com/2022/07/31/business/uaw-autoworkers-union-corruption.html>.

²⁸ <https://www.mackinac.org/mackinac-center-sues-uaw-for-fake-union-scheme>.

²⁹ A brief summary of dues skim and its connection to right to work can be found here: Jarrett Skorup, “How Right-to-Work and the End of the ‘Dues Skim’ Killed the SEIU in Michigan” (Mackinac Center for Public Policy, Nov. 20, 2017), <https://perma.cc/PSC9-WLZ8>.

³⁰ [https://ballotpedia.org/Michigan_Home_Healthcare_Amendment,_Proposal_4_\(2012\)](https://ballotpedia.org/Michigan_Home_Healthcare_Amendment,_Proposal_4_(2012)).

³¹ Jarrett Skorup, “Despite Collapse in Membership, SEIU Poised to Go All-In in Michigan” (Mackinac Center for Public Policy, March 4, 2020), <https://perma.cc/7MKW-727Q>.

Membership declines like these signal that the home health care workers forced into the SEIU had determined whatever services the union was providing did not justify membership.

The Forced Rider Problem Is Unrelated to Right-to-Work and that Problem can be Solved Without Addressing Right-to-Work

Removing right-to-work stops workers from making this choice. If the issue is about fairness, however, there is another solution—working with federal lawmakers to end union’s mandatory duty of exclusive representation.

The forced rider problem is not one that is caused by right-to-work. Instead, this problem is a creature of federal law, namely, Section 9 of the National Labor Relations Act. 29 USC § 159(a), which specifically provides that unions act as the exclusive representative of employees within a particular bargaining unit, including those who choose not to join the union. The NLRA pre-empts state law on this issue, however, and would require the U.S. Congress intervene to modify this authority.

If those efforts succeed, however, unions would be free to represent only their members. And in like fashion, non-members could represent themselves. This would eliminate the forced rider/free-rider dilemma, and would lead to stronger unions through competition.

As for efforts in Michigan, I would respectfully ask that you let workers decide what is best for themselves, until such time as federal law empowers them to do so.

Conclusion

Right-to-work laws lead to stronger economic growth, more choices for workers, and unions that are more responsive to the needs of their members. The Michigan legislature should preserve this law, so that Michigan can continue to grow, develop, and become a state we are prouder of every day.

Opposition to House Bill 4007

Good morning. Thank you for allowing me to testify. Prevailing wage mandates artificially lift the cost of government construction projects. The Mackinac Center has extensively researched this subject and estimated its potential cost to taxpayers

The Mackinac Center's most recent research effort, a forthcoming study, indicates that the cost of road construction is raised by between 8.5% and 14.3% in quality-adjusted road miles. As of 2018, we estimate that Michigan's former prevailing wage law added between \$5,900 and \$9,200 per mile in additional costs.

Two previous, cost-specific studies were performed by the Mackinac Center during our history. The most recent, published in 2007 found a 10% to 15% increase in construction costs associated with Prevailing Wage.

Our 1999 study, by Ohio University economist Richard Vedder, examined a period from 1994 to 1997 when Michigan's PW law was briefly suspended and found PW raises construction costs by about 10%. At the time, Vedder estimated a dollar cost increase of \$275 million in extra capital outlays due to Michigan's prevailing wage law.

I believe the majority of the highest quality research shows that prevailing wage laws raise construction costs for all taxpayers. It does so unfairly by effectively transferring wealth from Michigan's many workers to a relative few.

Thank you for your time and attention.

Michael D. LaFaive

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