#### Non-unique – right to work.

Sherer 24, Deputy Director of EPI’s Economic Analysis and Research Network (EARN) and directs EARN’s Worker Power Project, supporting research-organizing partnerships among EARN groups, labor and grassroots organizations to advance racial, gender, and economic justice through state and local policies that expand workers’ ability to unionize and collectively bargain (Jennifer, “Data show anti-union ‘right-to-work’ laws damage state economies,” Economic Policy Institute, 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/)

So-called “right-to-work” laws constrain workers’ collective bargaining rights, resulting in lower wages and benefits for all workers

RTW laws are designed to diminish workers’ collective power by prohibiting unions and employers from negotiating union security agreements into collective bargaining agreements, making it harder for workers to form, join, and sustain unions. As a result, states with RTW laws generally have lower unionization rates than non-RTW states. Private-sector workers in RTW states are less likely to be covered by a union contract than peers in non-RTW states, even after controlling for other factors that can be related to unionization (such as industry, occupation, education, age, gender, race, ethnicity, and foreign-born status).

Consequently, workers in states with RTW laws have lower wages, reduced access to health and retirement benefits, and higher workplace fatality rates. On average, workers in RTW states are paid 3.2% less than workers with similar characteristics in non-RTW states, which translates to $1,670 less per year for a full-time worker.1

#### Spills out

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” Indiana Legal Studies Research Paper Number 543)

Unions are the parties best able to provide paid organizing staff to do the work that Yang and Zhang describe---to give shape to a social movement that can adopt online activist techniques and translate them to protests, but they must be willing to do so. In the introduction, this Article suggested that UAW President Sean Fain’s call for a general strike provides a goal for the labor movement with a definite date.289 Fain’s call provides a goal. Unions have infrastructure, but from time to time it needs new fuel to make it go. In fact, unions provided the infrastructure to the “Red for Ed” movement which spread beyond Republican controlled states into Democratic controlled states. 290 As Tarlau observes,

“The 2018 #RedForEd movement swept across the country and mobilized teachers for collective action in places unions had failed, resulting in more workers on strike than the previous three decades. Often, these strikes were much larger than the unions themselves. And, in many ways, these were quintessential 21st-century movements, seemingly spontaneous, sparked by social media, and highly suspicious of traditional organizations and their leaders. Facebook was critical to their emergence. Nonetheless, these networked teacher movements fed into the infrastructure of the unions, bringing union members and non-members together to discuss what was happening, make decisions on what to do, and put into motion statewide strikes. Without this infrastructure, coordinating prolonged, statewide strikes might not have been possible. Without the “piston-box” of the union, this “steam” might have dissipated. As a new wave of labor activism currently spreads across the United States, the question of how this energy can help to reimagine and reinvent our labor unions will be critical.291

The proposal set out in this Article envisions a different approach. If the Court sets aside the NLRA, then unions will have to use their political strength in places like California to build a model regime, and to build their financial resources to expend resources organizing in states with a weaker union culture. After solidifying their power in states with a culture of unionism, they could use the constitutional protections in the Republican governed states to maintain a toehold and build an infrastructure that could activate the rights under state labor law that have lied long dormant under Garmon preemption.

#### State rights development is smooth. Even in red states.

Andrias 24, Patricia D. and R. Paul Yetter Professor of Law, Columbia Law School, J.D., Yale Law School. (Kate, November 21, 2024, “Constitutional and Administrative Innovation Through State Labor Law,” Wisconsin Law Review, Vol. 2024, Issue 5, pp. 1467-1511, Ulven)

B. Dynamic Labor Federalism

Yet, federalism can also be a tool for achieving progressive change when reform is blocked at the federal level.46 The California fast-food example discussed above illustrates one way in which unions and worker advocates are engaged in significant innovation at the state and local level, albeit constrained by principles of federal preemption.47

Frequently, worker movements that lack power to enact legislation at the national level nonetheless possess enough legislative influence in some states and localities to take advantage of a very different political economy.48 In particular, due to geographic sorting of the population, states are more likely to have unified party control: Eighty percent of the states as of January 2024 were controlled by a single political party.49 In jurisdictions where control is Democratic, pro-worker reforms are easier to achieve, although by no means guaranteed.50 States also have governance systems that are more majoritarian: Only seven states have processes equivalent to the filibuster; many have mechanisms for ballot initiatives or referenda; and many have elected judiciaries and constitutions that are easier to amend.51 Finally, while racial inequality remains pervasive and intractable in many states, other states and localities have taken affirmative steps to undo the effects of systemic racism.52

To be sure, as Andrew Elmore has documented, structural inequality between labor and business is replicated at the state level, even in “blue” jurisdictions.53 Corporations are often able to dominate state initiatives and legislative processes in order to limit pro-worker reforms. However, in blue states, the combination of geographic sorting and fewer veto points, a differently constituted judiciary, and a less entrenched racial hierarchy means that more pro-worker legislation and constitutional law is possible. In “red” states, reform tends to be decidedly anti-worker, but even in those environments, there are openings for popular pro-worker reform using direct democracy mechanisms. For example, numerous conservative states have increased their minimum wage via ballot initiative, despite staunch Republican opposition in state legislatures.54 In any event, in both red and blue states, the legal regime is far less ossified than at the federal level.

#### Even red states have a backstop in place

Racabi 25, professor of law @ Cornell (Gali, “In Lieu of the NLRA,” https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1161&context=clsops\_papers)

However, constitutional rights do not provide a framework and a comprehensive process for organizing workers. This Part surveys some of the main ways states offer such a statutory framework and institutional mechanisms for regulating private sector labor relations. The goal of this review is to showcase the existing frameworks available in case of diminishing importance of NLRA preemption.

Those comprehensive schemes differ from the occasional individual labor rights scattered across states’ labor codes. Even “red” states such as Alabama and Florida have made statutory headways toward protecting workers’ labor rights.16 In a way reminiscent of Section 7 of the NLRA, Florida statutorily recognizes:

Employees shall have the right to self-organization, to form, join, or assist labor unions or labor organizations or to refrain from such activity, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.17

Other states, including right-to-work states, have sporadic policy declarations along with organizing and union-related rights in their labor codes. 18

#### The CP’s blue-state wins give the organizing budget necessary for wins in red states

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” Indiana Legal Studies Research Paper Number 543)

There is an important counterpoint to consider when thinking about the possibilities of states regulating the workforce in favor of labor organizing—the reality that Republican controlled states may use the freedom from preemption to enact laws that make it all but impossible for workers to organize. There is a short- and long-term perspective to this. In the short term, there is a very real possibility that Republican controlled legislatures would introduce and pass legislation repealing their statutory based labor law regimes and do so fairly easily. In states such as Missouri that have constitutional provisions, there would have to be voter mobilization to repeal those protections, but voters would receive those protections in the meanwhile.342 However, the reality is that workers in Republican led states in the private sector with no constitutional or statutory protections such as South Carolina, where union density is 1.5%, could lose their ability to collectively bargain in the short term.343 The reality though is that collective bargaining and union power is disappearing throughout the United States via death through a thousand cuts under the current regime. This article attempts to present a mechanism for accelerating death to facilitate resurrection. The ability to resuscitate labor in blue states provides the ability for it to begin building the resources needed to initiate organizing in red-states with an organizing budget for doing so.

#### Devolution solves red states. Organizing resources and principled conservative federalism.

Velazquez 25, visiting assistant professor @ U of Indiana School of Law (Alvin, “The Case for Letting Labor Law Collapse,” Power At Work, https://poweratwork.us/the-case-for-letting-labor-law-collapse)

These are legitimate concerns, but the fact that labor membership is at the same level today as it was before Congress passed the NLRA should cause labor union leaders to ponder if now is the time to take a risk. Organized labor would be able to make significant gains in blue states, and use the resources that arise from forming strong unions to organize in more hostile environments. Additionally, even though the Court could do away with the NLRA, the anti-injunctive provisions of the Norris-LaGuardia Act would remain. Labor organizers still have the ability to engage in peaceful protests without interference from the federal courts.

Conclusion

My argument is an accelerationist one. I am pointing out that there is a silver lining in the Supreme Court’s hostility to the New Deal state. The silver lining is that the Court, through application of the severability clause, could eliminate the NLRA with the stroke of a pen. Doing so would lift preemption and allow states to regulate collective bargaining free from federal interference. It would also give organizers the easier task of trying to change state law rather than national law. This argument comes with one other benefit. The devolution of powers to the states should appeal to principled conservatives who believe that states are in a better position to regulate economic affairs than Congress.

This argument comes with risk. It would not be easy to let go of nearly ninety years of bargaining practice under a federal statute, but it may be worth it. The faith tradition from which I come teaches that to die is to gain. It celebrates this as a central tenet at Easter time. My paper provides a roadmap for the NLRA to die quickly and swiftly at the pen of a Supreme Court justice who is hostile to labor unions, such as Justice Alito. The question that the labor movement needs to weigh is whether to die is to gain a resurrected worker movement.

#### The counterplan’s sub-federal approach solves best:

#### A---Optimized follow-on. The FG takes the best parts of state innovation and follows on after proof of concept

Gerstein 20, Director of the State and Local Enforcement Project at the Harvard Labor and Worklife Program and is a Senior Fellow at the Economic Policy Institute. She was previously the Labor Bureau Chief in the New York State Attorney General's Office and a Deputy Commissioner in the New York State Department of Labor. A.B., Harvard College; J.D., Harvard Law School (Terri, “STATE AND LOCAL WORKERS' RIGHTS INNOVATIONS: NEW PLAYERS, NEW LAWS, NEW METHODS OF ENFORCEMENT,” 65 St. Louis L.J. 45, Lexis)

State and local action has been critical for safeguarding workers' rights during this challenging time. However, this action at the state and local level can and should continue even in light of the Biden administration's welcome pro-worker approach. Sustained and even increased momentum among states and localities is important, for various reasons.

First, as Justice Brandeis wrote: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the [\*89] rest of the country." 221This concept of states (and now localities too) serving as laboratories of democracy has allowed experimentation and advancement in laws and rights in a number of areas, not least among them worker protection laws. Paid sick days and paid family leave are both examples of this phenomenon: paid sick days began in one city, and paid family and medical leave began in one state, but both have now grown to cover millions of workers nationwide in a number of different places. With years of evidence from multiple jurisdictions of their feasibility, positive impact for workers, and lack of harm to employers, 222 national consensus has grown that these laws should be passed at the federal level, 223 with conservatives agreeing to the concept of at least paid parental leave, even though their proposals are generally lackluster. 224 Creativity in state and local worker protection legislation enables the development of cutting-edge approaches that address new developments in workplace challenges, including those emerging from new business models or from technological changes. States and localities can test policies that are not yet within the Overton window of the national conversation, on which there is not yet a national consensus. Even in prior eras with worker-friendly leaders at the federal level, states and localities have often taken the lead on important workplace and other policy issues, while the federal government later, with proof of concept, follows. 225

#### B---Speed.

Gerstein 20, Director of the State and Local Enforcement Project at the Harvard Labor and Worklife Program and is a Senior Fellow at the Economic Policy Institute. She was previously the Labor Bureau Chief in the New York State Attorney General's Office and a Deputy Commissioner in the New York State Department of Labor. A.B., Harvard College; J.D., Harvard Law School (Terri, “STATE AND LOCAL WORKERS' RIGHTS INNOVATIONS: NEW PLAYERS, NEW LAWS, NEW METHODS OF ENFORCEMENT,” 65 St. Louis L.J. 45, Lexis)

Another benefit of state and local involvement in workers' rights is their closeness to their constituents: they can easily partner with local organizations [\*90] and identify and address problems specific to their workforce and industries; they can also incorporate enforcement into other state and local functions, like granting of licenses (or Santa Clara County's dining out app). States and localities are also often nimbler than the federal government, with the ability to roll out new policies more quickly given the smaller size of government and the smaller regulated community at play.

#### C---Legal victories---they’re more likely at the state level

Gerstein 20, Director of the State and Local Enforcement Project at the Harvard Labor and Worklife Program and is a Senior Fellow at the Economic Policy Institute. She was previously the Labor Bureau Chief in the New York State Attorney General's Office and a Deputy Commissioner in the New York State Department of Labor. A.B., Harvard College; J.D., Harvard Law School (Terri, “STATE AND LOCAL WORKERS' RIGHTS INNOVATIONS: NEW PLAYERS, NEW LAWS, NEW METHODS OF ENFORCEMENT,” 65 St. Louis L.J. 45, Lexis)

In addition, trends like the growth of forced arbitration and increasingly conservative federal courts call for a continued focus on state and local action. Forced arbitration clauses prevent workers from being able to bring lawsuits in court; they are often coupled with class waivers, which prohibit employees from joining together to bring a class action. An estimated fifty-six percent of workers are currently covered by forced arbitration, 226 and that number is predicted to increase to over eighty percent by 2024. 227 This coverage is greatly facilitated by the Supreme Court's decision in Epic Systems v. Lewis, which held that class waivers accompanying arbitration provisions do not violate the National Labor Relations Act's right to collective action. 228 The proliferation of arbitration means a significant diminishment of private litigation, 229a longtime essential pillar of our employment rights enforcement system. This situation will not be fully resolved unless and until federal legislation is passed to prohibit forced arbitration at work. 230 In the meantime, forced arbitration places even more responsibility on, and creates more need for, all government enforcement agencies - federal, state, and local - to vindicate workers' rights and ensure employer compliance with workplace laws.

[\*91] In addition, the composition of the federal courts after confirmation of over 225 Trump-appointed federal judges 231 means that state courts may become a far more promising venue for worker claims in many jurisdictions. 232