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## **THE LEGISLATIVE ATTACK ON AMERICAN WAGES AND LABOR STANDARDS, 2011–2012**

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Over the past two years, state legislators across the country have launched an unprecedented series of initiatives aimed at lowering labor standards, weakening unions, and eroding workplace protections for both union and non-union workers. This policy agenda undercuts the ability of low- and middle-wage workers, both union and non-union, to earn a decent wage.

This report provides a broad overview of the attack on wages, labor standards, and workplace protections as it has been advanced in state legislatures across the country. Specifically, the report seeks to illuminate the agenda to undermine wages and labor standards being advanced for *non-union* Americans in order to understand how this fits with the far better-publicized assaults on the rights of unionized employees. By documenting the similarities in how analogous bills have been advanced in multiple states, the report establishes the extent to which legislation emanates not from state officials responding to local economic conditions, but from an economic and policy agenda fueled by national corporate lobbies that aim to lower wages and labor standards across the country.

In 2011 and 2012, state legislatures undertook numerous efforts to undermine wages and labor standards:

- Four states passed laws restricting the minimum wage, four lifted restrictions on child labor, and 16 imposed new limits on benefits for the unemployed.
- States also passed laws stripping workers of overtime rights, repealing or restricting rights to sick leave, undermining workplace safety protections, and making it harder to sue one's employer for race or sex discrimination.
- Legislation has been pursued making it harder for employees to recover unpaid wages (i.e., wage theft) and banning local cities and counties from establishing minimum wages or rights to sick leave.
- For the 93 percent of private-sector employees who have no union contract, laws on matters such as wages and sick time define employment standards and rights on the job. Thus, this agenda to undermine wages and working conditions is aimed primarily at non-union, private-sector employees.

These efforts provide important context for the much-better-publicized moves to undermine public employee unions. By far the most galvanizing and most widely reported legislative battle of the past two years was Wisconsin Gov. Scott Walker's "budget repair bill" that, in early 2011, largely eliminated collective bargaining rights for the state's 175,000 public employees.<sup>1</sup> Following this, in 2011 and 2012:

- Fifteen states passed laws restricting public employees' collective bargaining rights or ability to collect "fair share" dues through payroll deductions.<sup>2</sup>
- Nineteen states introduced "right-to-work" bills, and "right-to-work" laws affecting private-sector collective bargaining agreements were enacted in Michigan and Indiana.

The champions of anti-union legislation often portrayed themselves as the defenders of non-union workers—whom they characterized as hard-working private-sector taxpayers being forced to pick up the tab for public employees' lavish pay and pensions. Two years later, however, it is clear that the attack on public employee unions has been part of a broader agenda aiming to cut wages and benefits and erode working conditions and legal protections for all workers—whether union or non-union, in the public and private sectors alike.

This push to erode labor standards, undercut wages, and undermine unions has been advanced by policymakers pursuing a misguided economic agenda working in tandem with the major corporate lobbies. The report highlights legislation authored or supported by major corporate lobbies such as the Chamber of Commerce, National Federation of Independent Business, and National Association of Manufacturers—and by corporate-funded lobbying organizations such as the American Legislative Exchange Council (ALEC), Americans for Tax Reform, and Americans for Prosperity—in order to draw the clearest possible picture of the legislative and economic policy agenda of the country’s most powerful economic actors. To make the most clear-eyed decisions in charting future policy directions, it is critical to understand how the various parts of these organizations’ agenda fit together, and where they ultimately lead.

This report begins by examining the recent offensive aimed at public-sector unions in order to point out the tactics commonly employed by corporate lobbies such as ALEC and the Chamber of Commerce; it establishes that their agenda is driven by political strategies rather than fiscal necessities. The paper then examines the details of this agenda with respect to unionized public employees, non-unionized public employees, and unionized private-sector workers. Finally, the bulk of the report details the corporate-backed agenda for non-union, private-sector workers as concerns the minimum wage, wage theft, child labor, overtime, misclassification of employees as independent contractors, sick leave, workplace safety standards, meal breaks, employment discrimination, and unemployment insurance.

## **Contextualizing the legislative efforts to undermine wages and labor standards**

Before analyzing the legislative measures recently promoted to undermine U.S. wages and labor standards, it is useful to understand where the measures come from, and why they have appeared where they have. Using the recent attacks against public employee unions as a case study, the following subsections show how model legislation has been written by the staffs of national corporate-funded lobbies and introduced in largely cookie-cutter fashion in multiple states across the country. The most aggressive actions have been concentrated in a relatively narrow group of states that, though they did not necessarily face the most pressing fiscal problems, offered the combination of economic motive and political possibility to warrant the attention of the nation’s most powerful corporate lobbies.

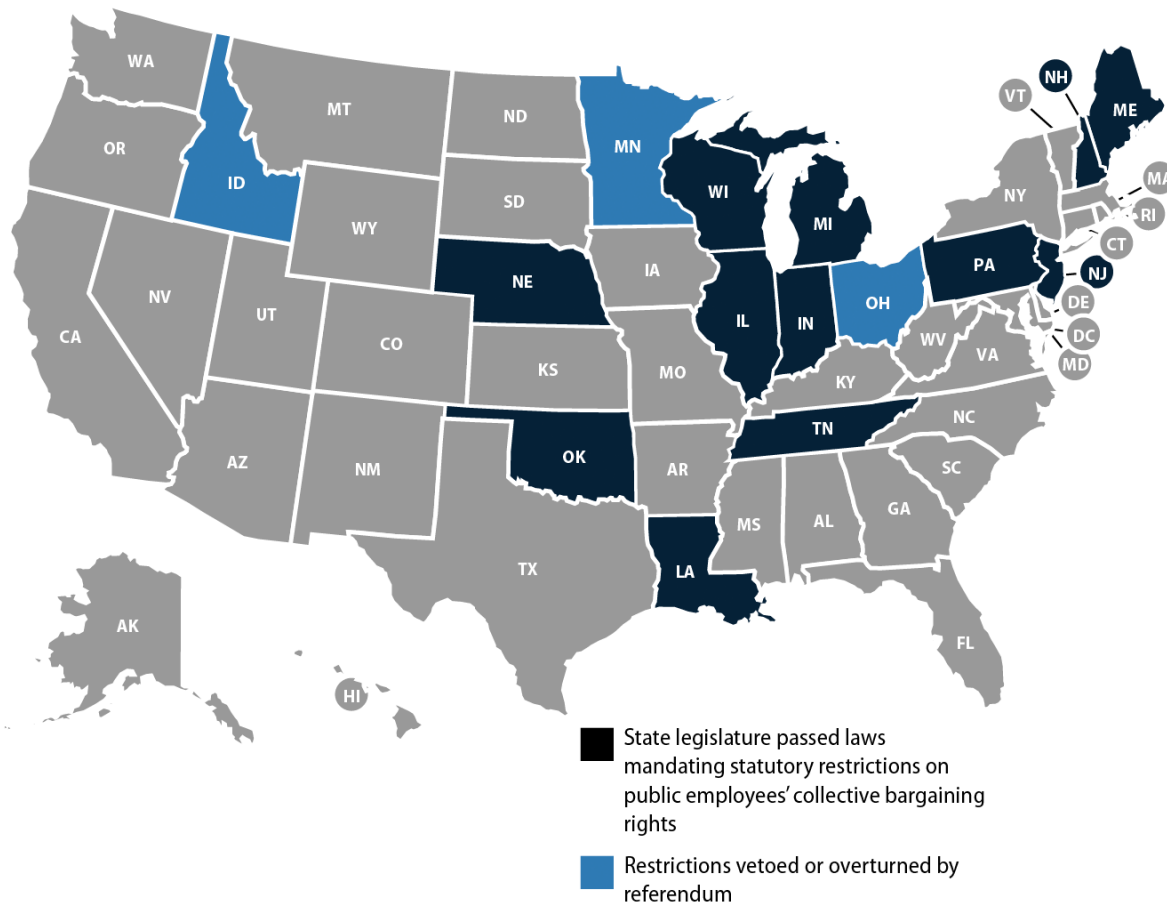
### ***Anti-unionism: A broad national agenda***

When Wisconsin Gov. Scott Walker proposed sharply curtailing union rights in 2011, he presented his legislation as a response to the particular fiscal conditions facing Wisconsin. Indeed, in each state where anti-union legislation was advanced, voters typically perceived it as the product of homegrown politicians and a response to the unique conditions of their state. In fact, however, broadly similar legislation was proposed simultaneously in multiple states, whose fiscal conditions often had little in common.

As depicted in **Figure A**, in 2011 and 2012, 15 state legislatures passed laws restricting public employees’ collective bargaining rights or ability to collect “fair share” dues through payroll deductions (or, in one state, restricting the collective bargaining rights of private-sector employees who are nonetheless covered under state labor law).<sup>3</sup> Beyond Wisconsin, for instance, collective bargaining rights were eliminated for Tennessee schoolteachers, Oklahoma municipal employees, graduate student research assistants in Michigan, and farm workers and child care providers in Maine.<sup>4</sup> Michigan and Pennsylvania both created “emergency financial managers” authorized to void union contracts. New Jersey’s and Minnesota’s legislatures both voted to limit public employees’ ability to bargain over health care.<sup>5</sup> Ohio legislators adopted

FIGURE A

States that passed laws mandating permanent, statutory restrictions on public employees' collective bargaining rights, 2011–2012



**Note:** This figure does not take account of states that enacted laws concerning public employees' wages and benefits, restrictions on public employees' union dues deductions, or restrictions on teachers' rights to tenure or seniority. In the case of Maine, the state legislature passed laws restricting the collective bargaining rights of certain private-sector employees who are covered under state labor law (see endnotes 3 and 4 for more detail).

**Source:** Author's analysis of data from National Council of State Legislatures, *Collective Bargaining and Labor Union Legislation Database*, <http://www.ncsl.org/issues-research/labor/collective-bargaining-legislation-database.aspx>

a law—later overturned by citizen referendum—largely imitating Wisconsin's, prohibiting employees from bargaining over anything but wages, outlawing strikes, and doing away with the practice of binding arbitration (the only impartial means of settling a contract dispute without a right to strike) in favor of the state agencies' right to set contract terms unilaterally. Indiana, which had already eliminated most collective bargaining rights for state employees in 2006, adopted new legislation that prohibits even voluntary agreements with state employee unions.<sup>6 7</sup>

Thus the most striking feature of the pattern of state legislation—relating not just to union rights but also to a wide range of labor and employment standards, as will be outlined in greater detail later in this paper—is the extent to which similar legislation has been introduced, in largely cookie-cutter fashion, in multiple legislatures across the country.

TABLE 1

### Educational performance in states that restricted teachers' collective bargaining rights in 2010 or 2011

State	Rank among 50 states on test score achievement* in 2011
<i>New Jersey</i>	4
<i>New Hampshire</i>	10
<i>Ohio</i>	15
<i>Michigan</i>	21
<i>Nebraska</i>	23
<i>Idaho</i>	23
<i>Wisconsin</i>	24
<i>Indiana</i>	26
<i>Minnesota</i>	26
<i>Oklahoma</i>	39
<i>Tennessee</i>	41

\* The states were ranked based on the share of fourth- and eighth-graders performing at or above basic achievement levels in reading and math.

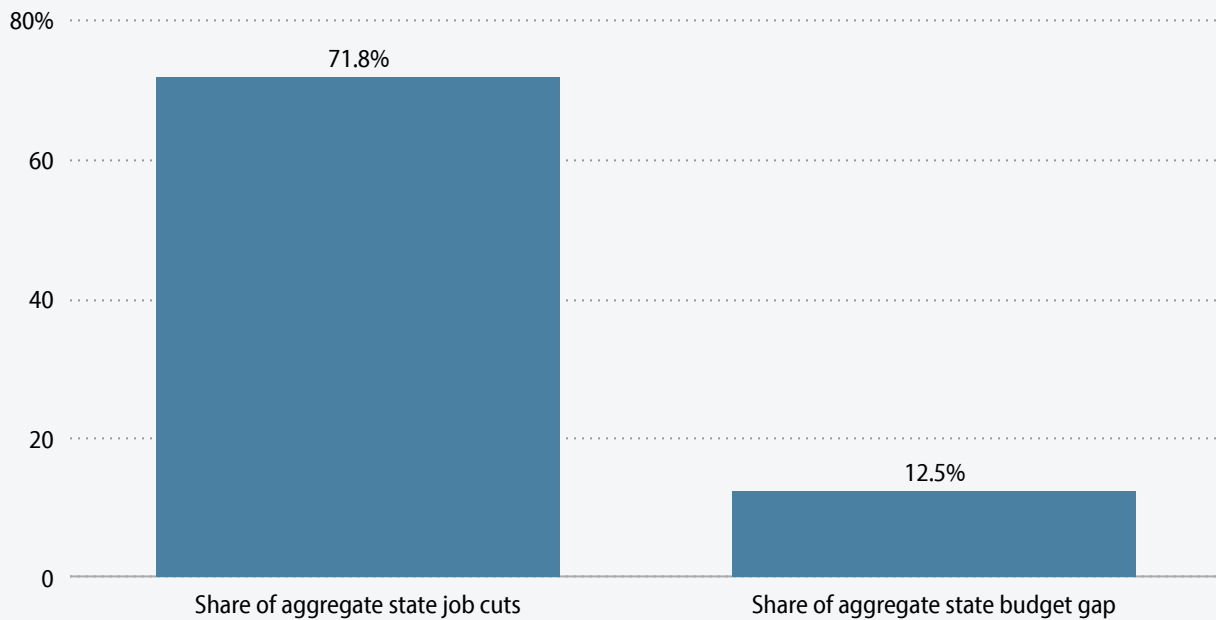
**Source:** Author's analysis of National Assessment of Educational Progress, *NAEP Data Explorer* [database], 2011, <http://nces.ed.gov/nationsreportcard/naepdata/>

Furthermore, the pattern of which states adopted which laws suggests that legislation was driven by politics rather than economics. While similar laws were proposed and adopted in many states, the states that adopted these laws are not necessarily those where problems were most severe. The most sweeping public employee pension reforms, for instance, did not occur in the states with the greatest unfunded liabilities. Wisconsin, Florida, and North Carolina all had among the best-funded and most solvent public employee pension funds at the start of 2011, yet all enacted dramatic cutbacks in pension benefits.<sup>8</sup> So too, laws restricting the collective bargaining rights of schoolteachers were not targeted at states with the highest dropout rates<sup>9</sup> or lowest achievement scores. As shown in **Table 1**, a majority of the states that passed legislation restricting teachers' collective bargaining rights in 2010–2011 scored in the top half of states, as measured by the share of fourth- and eighth-graders performing at or above basic achievement levels in reading and math. Only two of the 11 states passing such laws scored in the lowest-performing third of the nation.<sup>10</sup>

Perhaps most strikingly, the largest cutbacks in public services and layoffs of public employees did not take place in the states with the largest budget deficits. In 2011, state employment fell more sharply than in any year since the government began keeping track in 1955.<sup>11</sup> Yet these cuts were not correlated with where state officials faced the largest fiscal challenges. From January through December 2011, 230,000 jobs were eliminated in state and local government.<sup>12</sup> Texas alone cut 67,900 jobs, accounting for 31.3 percent of the total. An additional 87,900 positions—40.5 percent of the total—were eliminated in the 11 states that in November 2010 had newly put Republicans in control of all branches of state government. These 11 newly “all-red” states—Alabama, Indiana, Kansas, Maine, Michigan, Ohio, Oklahoma,

FIGURE B [VIEW INTERACTIVE on epi.org](#)

## Share of aggregate state budget gap and state public employee job cuts accounted for by newly red states\* plus Texas, 2011



**Note:** "Newly red states" refers to the 11 states that in November 2010 had newly put Republicans in control of all branches of state government. They include Alabama, Indiana, Kansas, Maine, Michigan, Ohio, Oklahoma, Pennsylvania, Tennessee, Wisconsin, and Wyoming.

**Source:** Bryce Covert and Mike Konczal, *The GOP's State Project of Slashing the Public Workforce*, Roosevelt Institute, March 27, 2012, <http://www.rooseveltinstitute.org/sites/all/files/GOPProjectSlashingPublicWorkforce.pdf>; Elizabeth McNichol, Phil Oliff, and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, January 9, 2012, <http://www.cbpp.org/cms/index.cfm?fa=view&id=711>

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Pennsylvania, Tennessee, Wisconsin, and Wyoming—laid off an average of 2.5 percent of their government employees in a single year; by comparison, the other 39 states together averaged cutbacks only one-fifth as large. As depicted in **Figure B**, these 11 states plus Texas accounted for 71.8 percent of the public jobs eliminated in 2011,<sup>13</sup> yet in that same year, these 12 states accounted for just 12.5 percent of the aggregate state budget shortfall.<sup>14</sup> Thus, the relationship is exactly the opposite of what one would expect if decisions were based on economics: More than two-thirds of total job cuts came from states that accounted for just one-eighth of the total state budget shortfall.

These data suggest that legislation was driven by a national agenda, and that the pattern of which laws were passed was based not on where they were economically necessary, but on where they were politically feasible.

### ***Understanding national legislative patterns***

The state-by-state pattern of public employment cuts, pension rollbacks, and union busting makes little sense from an economic standpoint. But it becomes much more intelligible when understood as a political phenomenon.

As previously noted, in November 2010, 11 states gave Republicans new monopoly control over their state government, putting them in charge of both houses of the legislature as well as the governor's office. These historic gains were part of the Tea Party–inspired “wave” election that, at the federal level, saw the GOP regain control of the U.S. House of Representatives. They also reflected the impact of unlimited corporate spending, as the Supreme Court's *Citizens United* decision overturned restrictions on campaign spending at the state as well as federal levels. In Wisconsin, for instance, long-standing restrictions that limited corporate political spending were ruled invalid. As a result, the 2010 elections were the most expensive in the state's history, with money flooding in from out-of-state business interests.<sup>15</sup> The officials who took office in January 2011 represented the first crop of legislators elected under the new rules of unlimited spending.

Much of the most dramatic legislation since 2011 has been concentrated in these 11 states. Particularly in states such as Michigan, Wisconsin, Ohio, and Pennsylvania, which have traditionally upheld high labor standards, the 2010 election provided a critical opportunity for corporate lobbies to advance legislative goals that had long lingered on wish lists. Where Republicans found themselves in total control of states whose statutes had been shaped by a history of strong labor movements, employer associations and corporate lobbyists were eager to seize on this rare and possibly temporary authority to enact as much of their agenda as possible.

### ***Who is behind this agenda?***

Former U.S. Speaker of the House Tip O'Neill once famously quipped that “all politics is local”<sup>16</sup>—suggesting that even U.S. senators and representatives ultimately run for election based on their reputation for solving local problems. The past few years, however, have stood this axiom on its head: Local politics has become nationalized, with state legislation written by the staffs of national lobbies, funded in a coordinated effort by national and multinational corporations.

The attacks on labor and employment standards have been driven by a powerful coalition of anti-union ideologues, Republican operatives, and corporate lobbies. Republican strategists such as Grover Norquist have long identified public employees, labor unions, and trial lawyers as three “pillars” of the Democratic Party—unions and lawyers providing campaign funds and public employees providing the army of volunteers making phone calls and knocking on doors in support of “big-government” Democrats.<sup>17</sup> It is no accident that the hardest-fought anti-union campaigns have been waged in so-called battleground states. If Republicans cut off union funds and campaign volunteers in tossup states such as Michigan, Indiana, Pennsylvania, and Ohio, they could conceivably alter control of the federal government.<sup>18</sup>

But behind the Republican operatives, the most important force spurring this agenda forward is a network of extremely wealthy individuals and corporations. The anti-union campaigns have been primarily funded by a coalition of traditional corporate lobbies such as the Chamber of Commerce and National Association of Manufacturers, along with newer and more ideologically extreme organizations such as the Club for Growth and the Koch brothers–backed Americans for Prosperity.

Recent trends have conspired to endow this coalition with unprecedented political leverage. As the U.S. economy has grown dramatically more unequal over the past few decades, it has produced a critical mass of extremely wealthy businesspeople, many of whom are politically conservative. At the same time, elections for public office have become more expensive than ever, leaving politicians increasingly dependent on those with the resources to fund campaigns. Finally, the *Citizens United* decision abolished longstanding restrictions on corporate political spending. In this way, the dramat-



ically unequal distribution of wealth has translated into similarly outsized political influence for those at the top. The 2010 elections saw record levels of spending by business political action funds.<sup>19</sup> In large part, the series of anti-union attacks launched in 2011 reflects the success of that strategy.

Perhaps the most important organization facilitating the work of this coalition is the American Legislative Exchange Council (ALEC). ALEC is a national network that brings state legislators together with the country's largest corporations—including Wal-Mart Stores Inc., The Coca-Cola Company, FedEx, Amway, Exxon Mobil Corp., Koch Industries Inc., and leading tobacco and pharmaceutical firms<sup>20</sup>—to formulate and promote business-friendly legislation. Due to a recent exposé by a disgruntled member, the inner workings of the organization have been brought to light.<sup>21</sup> ALEC's 2,000 member legislators include a large share of the country's state senate presidents and house speakers. Legislators are invited to conferences—often at posh resorts—where committees composed of equal numbers of public and private officials draft proposals for model legislation. ALEC's staff then drafts the legislative language and produces supporting policy reports. Thus state legislators with little time, staff, or expertise are able to introduce fully formed and professionally supported legislation. Ultimately, the key “exchange” that ALEC facilitates is between corporate donors and state legislators: The corporations pay ALEC's expenses, contribute to legislators' campaigns, and fund the state-level think tanks that promote legislation; in return, legislators carry the corporate agenda into their statehouses. Over the past decade, ALEC's leading corporate backers have contributed more than \$370 million to state elections, and over 100 laws a year based on ALEC's model bills have been adopted.<sup>22</sup>

In many cases, ALEC pursues initiatives that directly benefit the bottom line of its corporate partners. For instance, ALEC receives money from energy companies and lobbies against environmental controls; it receives money from drug companies and advocates prohibiting cities from importing discounted drugs from Canada; and it received money from Coca-Cola and lobbied against taxes on sugary soft drinks.<sup>23</sup> Likewise, it receives money from private prison operators and advocates for policies that would raise prison occupancy rates, such as the detention of undocumented immigrants and the restriction of parole eligibility.<sup>24</sup> It even received money from “payday loan” companies and opposed a law that prohibited such firms from charging more than 36 percent interest.<sup>25</sup>

But ALEC also promotes a broader economic and deregulatory agenda that is not directly tied to the profitability of specific donors—including advocating for cuts to Social Security, unemployment insurance, and food stamps; supporting more trade treaties on the NAFTA model; and cutting public funding for schools, as well as supporting efforts to block union organizing and restrict union participation in political debates.<sup>26</sup> Virtually all of the initiatives described in this report—including forced privatization, “right to work,” and abolishing minimum-wage and prevailing-wage laws—reflect model statutes developed by ALEC and promoted through its network. This dimension of ALEC's work is not aimed at immediately enhancing specific donors' revenues, but at reshaping the fundamental balance of power between workers and employers.

Local politics has become nationalized, with state legislation written by the staffs of national lobbies, funded in a coordinated effort by national and multinational corporations.

A common strategy ALEC employs to advance its agenda is to develop multiple model bills addressing the same issue. The bills do not represent alternative ways of thinking about policy; rather, ALEC seems to be gauging how far lawmakers in a given state are willing to go toward the organization's end goal. ALEC and its legislative partners then calibrate their bills to what they believe is politically feasible in a given place at a particular time.

For instance, as a policy goal ALEC calls for complete abolition of the minimum wage, arguing that such laws “represent an unfunded mandate on business by the government.”<sup>27</sup> For states that may not be ready to completely repeal the minimum wage, however, ALEC offers a model bill that simply blocks any minimum-wage increase. For yet more-moderate legislators, ALEC has model legislation that, while perhaps allowing a one-time increase in the minimum wage, opposes tying the wage to annual increases in inflation.<sup>28</sup>

In this sense, when evaluating any given piece of corporate-promoted legislation, it is important to examine not only the immediate bill itself, but to understand the end goal of the agenda it is part of. Bills to prohibit inflation adjustment of the minimum wage are not really about inflation, for instance; they are simply the step that ALEC-allied legislators believe they can accomplish in this given session toward the ultimate goal of eliminating the minimum wage altogether.

Thus, the balance of this report will evaluate specific laws both on their own terms and as contributions toward broader economic goals. It first spells out the details of the corporate-backed legislative agenda with respect to public employees and public services, and then situates this agenda within the broader effort to lower wages and employment standards for all American workers—particularly the 93 percent of private-sector employees who are not represented by a union.

## **The legislative offensive against public employees and public services**

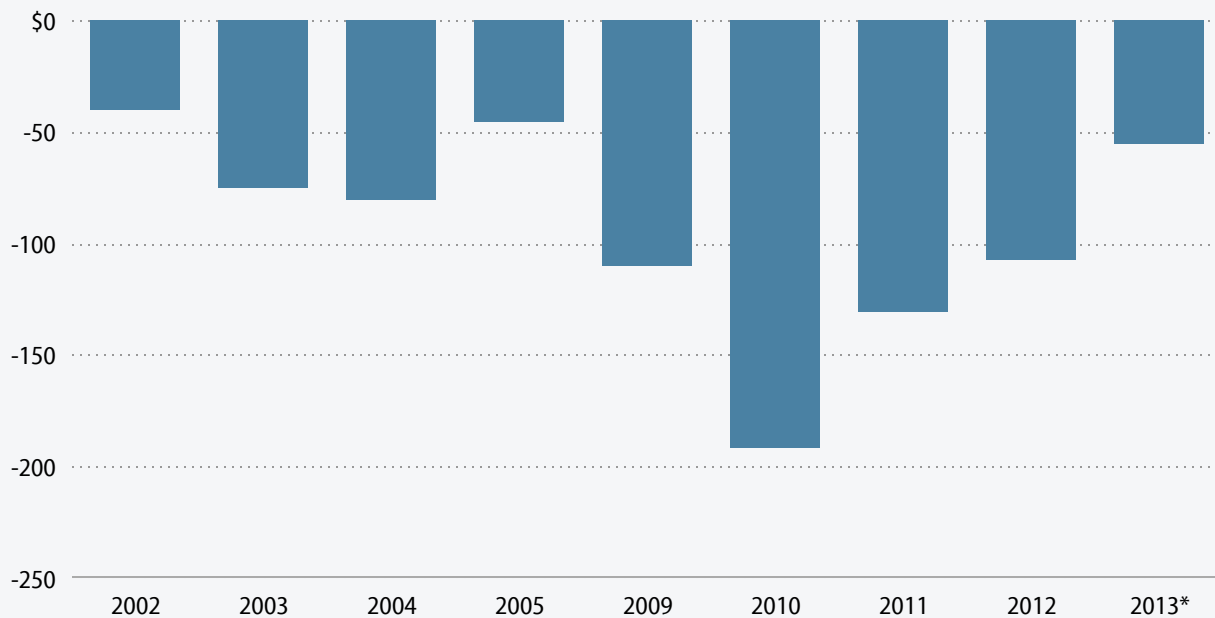
Having outlined the origin of recent legislative measures aimed at undermining unions, wages, and labor standards—as well as the strategies employed to enact these measures—the report now spells out the details of this agenda, beginning with an examination of the recent attacks on public employees and public services. The sections below provide additional evidence that these attacks are not a response to fiscal crises, but rather reflect a political agenda unrelated to budget deficits. Further, the effort to undermine public services extends to attacks on even non-unionized government workers. Finally, this broad agenda is likely to have spillover effects that undermine wages, benefits, and labor standards for private-sector as well as public employees.

### ***Wisconsin and beyond: Attacks on public employee unions***

In Wisconsin, Ohio, and elsewhere, attacks on public employee unions were justified as a necessary response to the fiscal crises facing state governments. Commentators regularly suggested that budget deficits were the fault of unions that used their political clout to extract above-market wages and exorbitant benefits from hard-working taxpayers. In advocating a bill largely eliminating public employee bargaining rights, Wisconsin Gov. Walker argued that the law was needed because “our people are weighed down paying for a larger and larger government” and “we can no longer live in a society where the public employees are the haves and taxpayers who foot the bills are the have-nots.”<sup>29</sup> Likewise, when Ohio Gov. John Kasich enacted a similar statute, he insisted that he was “empowering taxpayers.”<sup>30</sup> Thus the debate—in Wisconsin, Ohio, and elsewhere—was framed as a contest between the demands of unionized government employees and the needs of hard-pressed taxpayers in the private sector.

FIGURE C [VIEW INTERACTIVE on epi.org](#)

**Total state budget shortfall in each fiscal year, 2002–2005, 2009–2013 (billions)**



\* Reported to date

**Source:** Adapted from Figure 2 in Phil Oliff, Chris Mai, and Vincent Palacios, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, June 27, 2012, <http://www.cbpp.org/cms/index.cfm?fa=view&id=711>

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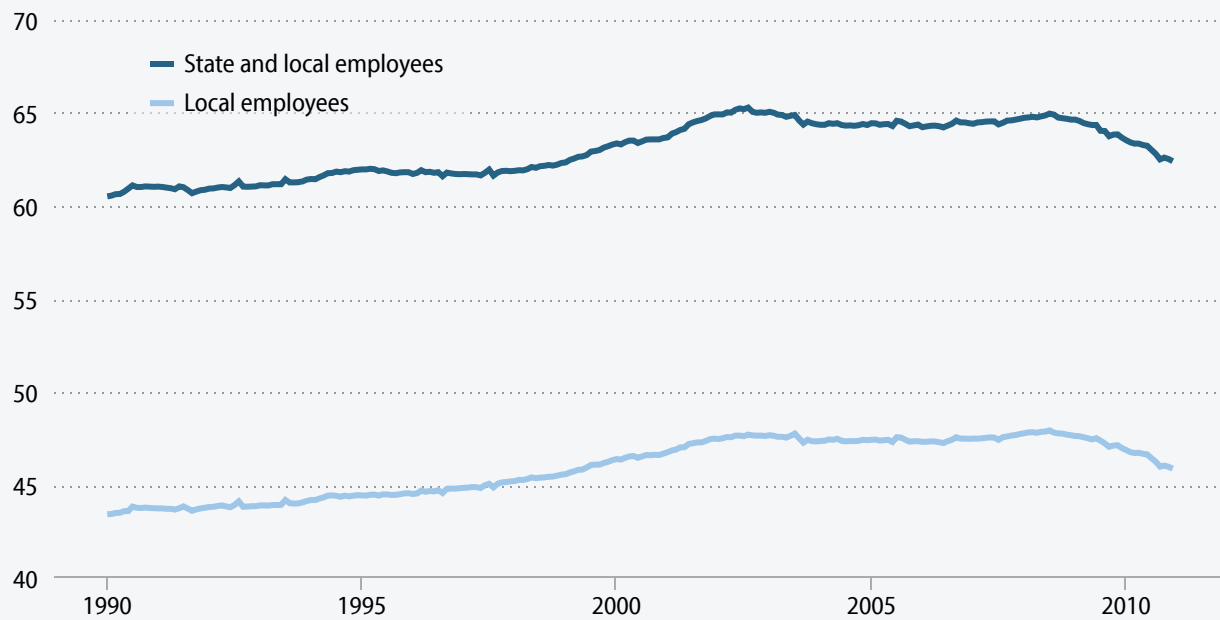
But as alluded to previously, this characterization does not fit the economic reality. Rather than extorting above-market wages, an apples-to-apples comparison suggests that public employees generally make slightly *less* than similarly skilled private-sector employees.<sup>31</sup> Furthermore, the timing of the budget crises that swept the nation in 2010–2011 makes clear that these crises were not the product of excessively generous employee compensation.

The budget shortfalls came on suddenly. As recently as 2007, 40 of the 50 states enjoyed budget surpluses.<sup>32</sup> As shown in **Figure C**, three years later, the states faced a combined shortfall of almost \$190 billion, by far the largest on record.<sup>33</sup> Whatever caused the crisis, then, must have occurred in 2008–2009. There was certainly no dramatic increase in employee compensation in these years. On the contrary, as seen in **Figures D** and **E**, both the number of public employees per capita and the proportion of state and local budgets devoted to employee compensation have largely been flat for the past decade.<sup>34</sup>

What occurred in that short timespan was not any increase in state spending, but rather, as shown in **Figure F**, a dramatic falloff in revenues, caused by the collapse of the housing market and the onset of the Great Recession.<sup>35</sup> Budget deficits struck nearly every state, regardless of their public employees' union status. Statistical analysis shows no correlation whatsoever between the presence of public employee unions and the size of state budget deficits.<sup>36</sup> Indeed, Texas—which prohibits collective bargaining for nearly all public employees—faced a massive, two-year budget shortfall of \$18 billion, or 20 percent of state expenditures.<sup>37</sup>

FIGURE D [VIEW INTERACTIVE on epi.org](#)

## State and local government workers per 1,000 residents, 1990–2010



**Source:** Sylvia Allegretto, Ken Jacobs, and Laurel Lucia, *Wrong Target: Public Sector Unions and State Budget Deficits*, Center on Wage and Employment Dynamics, Institute for Research on Labor and Employment, University of California-Berkeley, October 2011, [http://www.irl.berkeley.edu/research/state\\_budget\\_deficits\\_oct2011.pdf](http://www.irl.berkeley.edu/research/state_budget_deficits_oct2011.pdf)

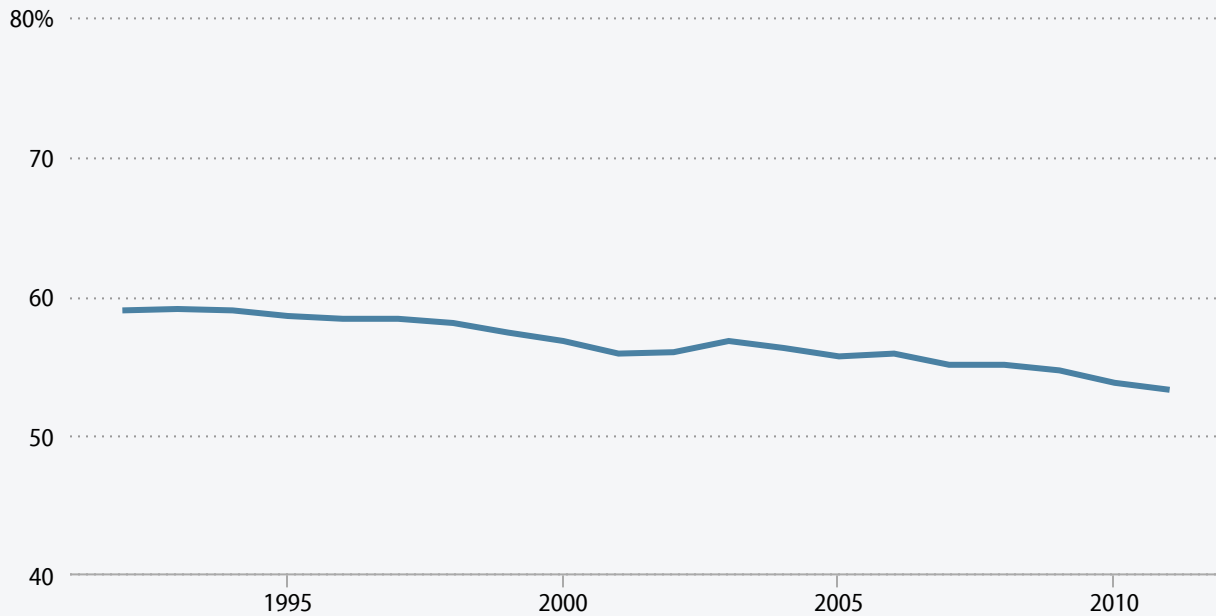
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Because unions did not cause the deficits, it is clear that undermining unions' bargaining power was not undertaken as a strategy for solving states' fiscal problems. There may be times when employee concessions are needed to help close budget gaps, but such concessions in no way require curtailing bargaining rights. Nowhere was this made clearer than in Wisconsin itself. Indeed, at the start of 2011, Wisconsin was one of the few states not facing a budget crisis; on the eve of Gov. Walker's inauguration, the state's nonpartisan legislative research office announced that Wisconsin would start 2011 with a surplus of \$121 million. The budget went into the red only after the governor, as one of his first acts in office, enacted large new tax cuts for the business community.<sup>38</sup>

The disconnect between union-busting and fiscal necessity became painfully clear during debate over the governor's budget proposal. When Wisconsin unions announced they had agreed to all of Gov. Walker's economic proposals—including significant benefit reductions—Walker declared that, despite having been granted everything he claimed was needed to close the budget gap, no deal would be acceptable as long as workers retained the legal right to bargain. Under questioning by members of the U.S. Congress two months later, Walker conceded that some of the most draconian provisions in his legislation would not save the state anything.<sup>39</sup> So too, the governor of Ohio—which adopted a law similar to Wisconsin's, only to see it overturned by a subsequent voter referendum—conceded that his proposed law “does not affect our budget.”<sup>40</sup>

FIGURE E [VIEW INTERACTIVE on epi.org](#)

## Public employee compensation as a share of total state and local expenditures, 1992–2011



**Source:** David Madland and Nick Bunker, *State Budget Deficits Are Not an Employee Compensation Problem*, Center for American Progress, March 10, 2011, <http://www.americanprogressaction.org/issues/labor/report/2011/03/10/9206/state-budget-deficits-are-not-an-employee-compensation-problem/>

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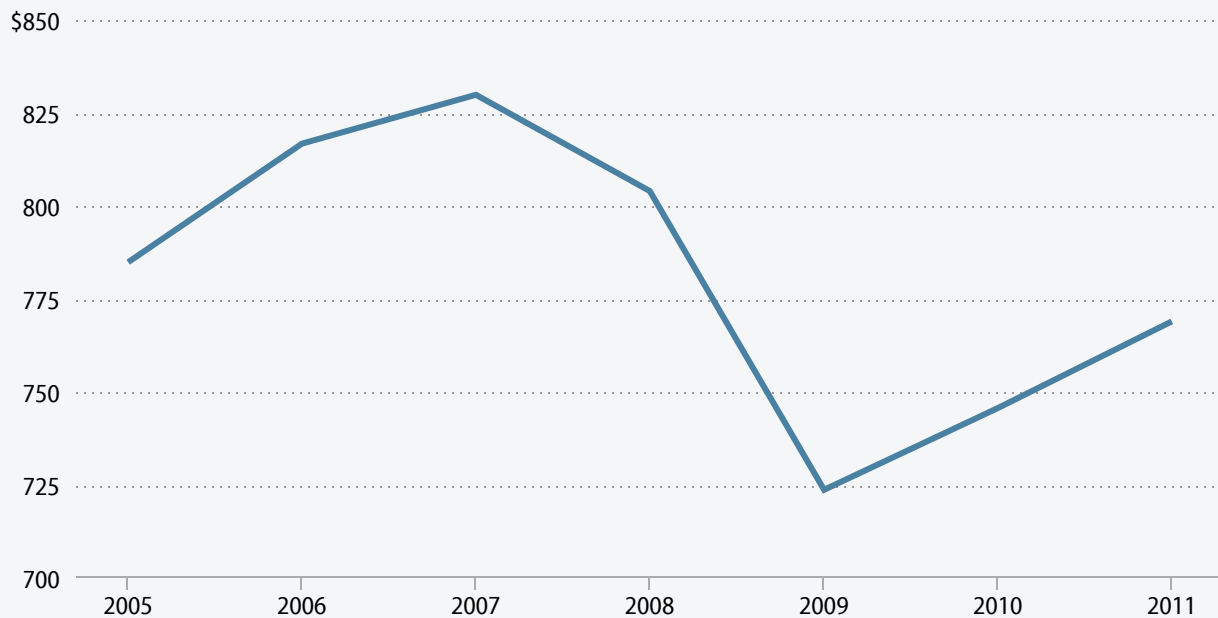
In short, as noted earlier, the attack on collective bargaining rights was not a fiscal strategy, but a political agenda unrelated to budget requirements.

### ***The effort to diminish public services***

The efforts to undermine public employee unions are part and parcel of a broader strategy to diminish public services.

Legislators faced truly stark budget shortfalls in 2011, forcing them to contemplate drastic cuts to essential services. In Arizona, for instance, the governor proposed cutting off health insurance for nearly 300,000 people—including some in the middle of chemotherapy or dialysis treatments.<sup>41</sup> Texas eliminated over 10,000 teaching jobs; cut funding that supported full-day pre-kindergarten programs for 100,000 at-risk kids; and announced plans to consider Medicaid cuts that could lead to the closing of 850 of the state’s 1,000 nursing homes, potentially forcing frail, low-income elderly residents into the streets.<sup>42</sup> The city of Camden, N.J.—one of the most dangerous in the country—laid off half its police force.<sup>43</sup>

Budget cuts were particularly widespread—and particularly devastating—in the country’s school systems. In 2010–2011, 70 percent of all U.S. school districts made cuts to essential services.<sup>44</sup> Despite widespread evidence of the academic and economic value of preschool education, 12 states cut pre-K funding that year,<sup>45</sup> including Arizona,

**State tax revenues, 2005–2011 (billions of 2011 dollars)**

**Note:** Data are inflated using the CPI-U-RS.

**Source:** Lawrence Mishel, *We're Not Broke, Nor Will We Be*, Economic Policy Institute, Briefing Paper #310, May 19, 2011, [http://www.epi.org/publication/were\\_not\\_broke\\_nor\\_will\\_we\\_be/](http://www.epi.org/publication/were_not_broke_nor_will_we_be/)

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which eliminated it completely.<sup>46</sup> Ohio repealed full-day kindergarten, and cut its preschool program to the point that the number of four-year-olds enrolled in state-supported preschool is now 75 percent less than in 2001.<sup>47</sup> Pennsylvania also cut back from full-day to half-day kindergarten in many districts—including Philadelphia, which also eliminated 40 percent of its teaching staff, cut its English-as-a-second-language program in half, and increased elementary school class sizes from 21 to 30.<sup>48</sup> More than half the nation's school districts have changed their thermostat settings—making classrooms hotter in summer and colder in winter—to reduce energy costs.<sup>49</sup> In Florida, the Seminole County school board proposed raising thermostats to 78 degrees, the maximum allowed by law.<sup>50</sup> The Tucson, Arizona, school district eliminated geometry, art, drama, and photography classes, increased class sizes to up to 40 students, and was still fined \$1.9 million for failing to provide the minimum required instruction hours for seventh and eighth graders.<sup>51</sup> North Carolina cut its textbook budget by 80 percent.<sup>52</sup>

Yet it is striking that even in the face of such drastic cuts, lawmakers often treated retrenchment not as an undesirable, temporary necessity, but rather as an opportunity to make what they perceived as overdue cuts. It would have been easy, for instance, to structure these cuts as temporary measures, with services set to be restored when economic growth reached a given level or state coffers were replenished. But no legislature took this route.

Indeed, if elected officials were simply concerned with closing budget gaps, they had many alternative methods for achieving this end without cutting essential services.<sup>53</sup> For instance, in 2011 the deficits in all 50 states could have been

erased entirely through two simple policy changes: effectively undoing the Bush tax cuts for the top 2 percent of income earners by imposing an equivalent income tax at the state level, and taxing capital gains at the same rate as ordinary income.<sup>54</sup> Both of these policies are within the power of states to enact, without waiting for Congress to act. Yet none of the states even seriously explored this road to fiscal balance.

On the contrary, many legislatures enacted new tax giveaways to corporations and the wealthy while simultaneously slashing funding for schools, libraries, and health care. Twelve different states that enacted dramatic service cuts in 2011 also provided large new tax cuts.<sup>55</sup> Michigan, for example, adopted a bill, authored by an ALEC member, that eliminated the state's primary business tax and substituted a flat 6 percent corporate tax—costing the state \$1 billion per year in lost revenue—even while cutting K–12 funding by \$470 per student.<sup>56</sup> Despite the dire impact on education, the corporate tax cut was vigorously supported by the Chamber of Commerce, National Federation of Independent Business, and Michigan Restaurant Association.<sup>57</sup> Likewise, Florida eliminated its corporate income tax for nearly half the state's businesses, adopting a bill co-sponsored by a quartet of ALEC legislators and hailed by the Chamber of Commerce as the first step toward a complete phase-out of corporate income taxes.<sup>58</sup> And Ohio phased out its inheritance tax—which had only ever affected the wealthiest 7 percent of estates—forgoing almost \$300 million a year in funds that had been primarily dedicated to local government services.<sup>59</sup> This bill, too, received the avid support of the Chamber of Commerce (which hailed the bill as “the culmination of a decade-long advocacy effort”), National Federation of Independent Business (celebrating it among its “key victories”), and Americans for Prosperity (which applauded legislators’ “political courage” in abolishing inheritance taxes).<sup>60</sup>

Similarly, several states that enacted drastic cuts maintained significant “rainy day” funds that they chose to leave untouched, including Louisiana, South Carolina, and Iowa—whose rainy day fund was more than three times as large as its 2012 budget deficit.<sup>61</sup> Texas's \$18 billion budget gap could have been partially offset by tapping a portion of the state's \$6 billion rainy day fund, but the governor left those reserves intact even while imposing steep cuts to education, health care, and other public services.<sup>62</sup>

Finally, rather than seeking paths to eventually restore essential services, corporate lobbyists sought to lock in these cuts and guarantee that services would never be restored to a more robust level. Corporate-funded lobbies such as ALEC and Americans for Prosperity have long advocated measures, such as a so-called taxpayer bill of rights (TABOR), that constitutionally limit future state spending to the rate of population growth plus inflation.<sup>63</sup> There are multiple concerns with such formulae. For example, they prevent states from effectively aiding those in need or adopting countercyclical measures during economic downturns. Additionally, because the cost of core public services such as health care and education increases faster than the general rate of inflation, spending limits tied to the consumer price index force real (inflation-adjusted) *reductions* in service levels over time. Colorado is the only state to have adopted a TABOR provision to date, and its impacts were so troubling that the state's citizens voted in 2005 to suspend the TABOR formula.<sup>64</sup> But to enact such measures in the depths of recession would entail even greater pain. TABOR-style proposals would take cuts made in response to record budget deficits caused by the worst economic downturn in 70 years, and lock these in as the new high-water mark of public services that could never be exceeded, even after economic recovery. Yet this is exactly what the nation's most active corporate lobbies advocated, and what several states pursued.

In Michigan, legislators adopted a ballot referral asking voters to amend their state's constitution to require a two-thirds supermajority approval for any future tax increases. The proposal was strongly supported by the National Federation of

Independent Business (NFIB), which explained that it wanted to “lockdown ... some pretty substantive tax reforms” that the legislature had recently made. “We’re concerned that things will change,” NFIB State Director Charles Owens explained, “and over a period of time we’ll have a new makeup in the legislature and ... we will see some of the progress that we’ve made on tax policy here will be eroded.”<sup>65</sup> Grover Norquist’s Americans for Tax Reform likewise deemed it an “important measure” that would “help keep the growth of state government in check.”<sup>66</sup>

In New Hampshire, the Chamber of Commerce celebrated the legislature’s 2012 decision to advance a referendum that would add a constitutional amendment prohibiting the state from ever adopting an income tax.<sup>67</sup>

Florida’s constitution already caps tax increases, with maximum increases set by a moving five-year average of personal income growth. Yet legislators asked voters to approve an even stricter standard, limiting revenue growth to the TABOR formula of population growth plus inflation. The Chamber of Commerce strongly promoted this proposal, arguing that “the less government takes, the more Floridians will keep.”<sup>68</sup> The bill’s prime sponsor—ALEC member and Florida Senate President Mike Haridopolos—championed TABOR as a route to “less government, less taxes and more freedom.”<sup>69</sup> Florida voters, however, were unconvinced, rejecting the proposal by a 58 percent to 42 percent margin.<sup>70</sup>

Perhaps the most dramatic example of the corporate lobbies’ priorities in action comes from Arizona, a state often touted as a model for conservative policy. As described previously, Arizona lawmakers called for drastic cuts to both education and health services in 2011. Rather than conserving revenue in order to minimize these cuts, however, legislators enacted significant new cuts to both the state’s commercial property tax and its corporate income tax rates, at an annual cost set to reach \$538 million within five years.<sup>71</sup> The law—co-sponsored by 23 ALEC members including the Speaker of the House—was strongly championed by the National Federation of Independent Business and the Chamber of Commerce, which celebrated it as “historic legislation.”<sup>72</sup> Nationally, the cost of pre-kindergarten averaged just over \$4,100 in 2011.<sup>73</sup> Thus, for \$538 million, Arizona could have kept nearly 130,000 low-income four-year-olds in school. Legislators preferred to instead give the money to business owners. Finally, the same legislature voted to enact a TABOR statute—later vetoed by the governor—that would have made it nearly impossible to ever restore preschool funding in the future.<sup>74</sup>

The desire to lock in budget cuts rather than restore services as revenues rebound was recently evident in Texas, a state frequently touted as a national model by both the Chamber of Commerce and ALEC. Texas enacted draconian cuts in 2010–2012. But by January 2013, the economy had rebounded, state revenues had increased by 12.4 percent, and budget officials were projecting an \$8.8 billion surplus. Rather than restoring cut services, however, Gov. Rick Perry insisted the state had “[brought] in more than we need” and used his State of the State address to call for a constitutional amendment allowing “excess tax receipts” to be rebated to taxpayers.<sup>75</sup>

Thus, for the corporate lobbies that constitute the single most powerful force driving conservative politics, the budget crises of recent years were greeted not as tragedy, but as opportunity—a chance to advance long-held agendas and to lock in new restrictions on public services and workers’ rights.

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## ***Undermining public employees—union or not***

Beyond undermining public employee unions and reducing public services, corporate lobbies are also attempting to remove civil service protections and reduce public employee pay even in states with no government worker unions.

Starting in the late 1990s, ALEC began promoting model legislation calling for the elimination of civil service protections and the conversion of public employees to at-will status.<sup>76</sup> In 2012, this goal was achieved in Arizona, when the state adopted a law—authored by ALEC Task Force member Rep. Justin Olson—that largely abolishes the state’s civil service system.<sup>77</sup> Arizona public employees have no right to collective bargaining; thus, the attack on public employees there has nothing to do with union contracts.<sup>78</sup>

The Arizona governor’s office projects that within four years of the law’s passage, over 80 percent of state employees will be stripped of civil service protections and converted to at-will status.<sup>79</sup> The bill eliminates the system of regular across-the-board raises for employees, making raises instead dependent on supervisors’ discretion. It also abolishes the requirement that job openings be widely advertised and that a wide range of qualified applicants be given an opportunity for consideration—practices designed to avoid political favoritism and facilitate affirmative action. It instead allows supervisors to simply pick their favorites with minimal procedural requirements.<sup>80</sup> Gov. Jan Brewer trumpeted the fact that abolishing civil service protections would allow state managers to proceed with additional measures that accelerate work requirements and decrease employee compensation. The law “will usher in a host of HR practices modeled after those that are commonplace in the private sector,” the governor’s office stated, including “changes ... in administrative leave; overtime and compensatory leave; workers’ compensation; and hiring practices.”<sup>81</sup>

As public employee compensation is cut back, it is likely that the new law will have a negative ripple effect in the private-sector labor market. The State of Arizona is the single largest employer in both Phoenix and Tucson, the state’s two largest cities.<sup>82</sup> Where public employment plays a leading role in local labor markets, it influences wage and benefit standards in the broader private economy. If secretaries at the University of Arizona get overtime pay and reasonable family leave rights, for instance, this increases pressure on private employers to approach those standards—if not match them—if they hope to attract the most skilled employees. Conversely, cutting state employee compensation reduces the competitive pressure on private-sector employers. Thus, at least in those areas where the state is a leading employer, the degradation of public-sector labor standards will weaken workers’ bargaining leverage in the labor market as a whole.

Beyond its impact on compensation, the abolition of civil service protections threatens to undermine the ability of public servants to independently administer and enforce state law without fear of retribution from politically connected corporations. Many Arizonans spoke out against this bill, noting that civil service protections were created as a response to the long history of corrupt patronage practices and cronyism in government hiring and administration.<sup>83</sup> But the bill was strongly supported by the business community, with the Chamber of Commerce designating it a top legislative priority.<sup>84</sup> The National Federation of Independent Business likewise explained, in an editorial titled “Rewarding the Worth, Removing the Worthless,” that much of “business owners’ frustrations with the bureaucracy” stems from “entrenched middle managers in state employ who use and abuse their discretion within a regulatory environment.” Stripping these bureaucrats of civil service protections will make government “more responsive,” the NFIB argued.<sup>85</sup> However, the civil service was established, in part, precisely to avoid the type of “responsive” government in which a wealthy supporter’s phone call to the governor’s office can result in regulatory staff overlooking violations, going light

on fines, or approving questionable practices. For the corporate lobbies, it appears that a return to past practice may be a welcome change.

In this sense, the Arizona statute sheds important light on the extent to which corporate lobbies' attacks on public-sector unions are not necessarily driven by anti-unionism *per se*, but by a broader agenda of freeing business owners from public regulations and lowering labor standards for non-union and union workers alike.

### ***From the public sector to the private***

The attacks on public employees that have become so commonplace since 2011 have largely been framed as a call for fiscal austerity, insisting that government live within its means and not overburden taxpayers. However, when one pulls back from these particular battles to examine the full agenda of the leading corporate lobbies, it becomes clear that restricting the rights and compensation of public employees is only one component of a much broader agenda aimed at transforming labor standards across the economy. Most of this agenda has little to do with unions and nothing to do with public budgets.

In state after state, the same corporate lobbies that have played leading roles in fighting public employee unions have also launched equally vigorous attacks against the union rights of private-sector workers—an issue utterly unrelated to budget deficits or the size of government.

Scott Walker himself famously confided to an investor that his attack on public employee unions was part of a “divide and conquer” strategy that would ultimately enable him to undermine private-sector unions as well, through so-called “right to work” legislation.<sup>86</sup>

In 2011–2012, 19 states introduced legislation mandating “right to work” laws, and both Indiana and Michigan adopted such laws in 2012. Virtually all the major employer associations and corporate lobbies embraced “right to work” as a top legislative priority.<sup>87</sup> The Orwellian-named “right to work” laws do not guarantee anyone a job. Rather, they make it illegal for a union to require that employees who benefit from a collective contract contribute their fair share of the costs of administering that contract. By weakening unions' ability to sustain themselves financially, such laws aim to undermine the bargaining power of organized workers, and ultimately to drive private-sector unions out of existence.<sup>88</sup>

The corroding effects of “right to work” are the same for unions as they would be for any other type of organization. Under federal law, unions are required to provide all services to any worker covered by a union contract, for no charge—regardless of whether that person chooses to pay dues. Inevitably, when “right to work” laws guarantee employees can benefit from union contracts with no requirement to pay their share of the costs of producing that benefit, some will choose to avoid paying. Indeed, the Chamber of Commerce itself would not agree to live by the rules it seeks to impose on unions through “right to work” laws. Thus, when one former member of the Owensboro, Kentucky, Chamber of Commerce chose to stop paying dues—perhaps out of disagreement with the Chamber's political advocacy—the member asked if it would be possible to continue to receive member benefits without paying dues. Absolutely not, the Chamber replied. “It would be against Chamber by-laws and policy to consider any organization or business a member without dues being paid,” the Chamber explained. “The vast majority of the Chamber's annual revenues come from member dues, and it would be unfair to the other 850+ members to allow an organization not paying dues to be included in member benefits.”<sup>89</sup> The Chamber's logic is irrefutable: If it provided services without requiring dues, it

could not sustain itself as a viable organization. This, then, is the goal of “right to work” laws—to make unions financially unviable, so that corporations can avoid having to negotiate with their own employees.

### ***Case study: An offensive aimed at both union and non-union private-sector workers—Lowering labor standards in the construction industry***

In addition to the “right to work” assaults on private-sector unions as a whole, the past two years have brought a series of attacks aimed specifically at lowering labor standards in the construction industry. Although these are often framed as attacks against unionized workers, the actual legislative proposals aim at non-union as well as union workers.

Construction plays a critical role in the U.S. labor market as one of the most important sources of skilled, decently paying jobs that do not require a college degree and that cannot be shipped abroad. In addition, construction is projected to be one of the fastest-growing industries during the current decade, second only to health care.<sup>90</sup> Efforts to lower wages, benefits, and working conditions in this industry are likely to have far-ranging impacts on working- and middle-class communities across the country where—particularly as manufacturing jobs have disappeared—construction is an increasingly critical source of work for those looking to support their families at a minimally decent living standard.

The organizations representing anti-union construction owners and investors—including the Chamber of Commerce, Business Roundtable, and Associated Builders and Contractors—have sought for decades to lower labor standards and diminish workers’ bargaining power in the industry.<sup>91</sup> The elections of 2010 and subsequent state fiscal crises provided a political opening for advancing these longstanding goals. For the past two years, these organizations have focused on restricting or prohibiting both project labor agreements and prevailing wage laws.

#### **Project labor agreements**

A project labor agreement (PLA) is an agreement established at the start of large, complex construction projects involving multiple types of contractors that sets the terms of employment for all contractors’ employees. PLAs were first used on the big public works projects of the 1930s. At Grand Coulee and Hoover dams, project managers sought to avoid a potentially endless series of labor negotiations as one contract after another came up for renewal, causing expensive delays and generating a steady threat of strikes. The elegant solution to the problem was to put all workers under a single, umbrella contract that was tailor-made for that specific project.<sup>92</sup> In recent years, government agencies have also negotiated cost-saving concessions, such as no-strike clauses or reduced premium pay, as part of the terms of a PLA.

Any contractor—union or non-union—can work on projects under a typical PLA, as long as it abides by the established terms of employment. For example, 30 percent of the contractors on Boston’s Central Artery/Tunnel project—the “Big Dig”—were non-union.<sup>93</sup> Generally, workers are hired for these projects through

a union hiring hall, but both union and non-union workers may be hired through the hall, and non-union contractors are often specifically authorized to bring their core employees with them onto a PLA project. Nevertheless, because they perceive that PLAs benefit unions, non-union contractors generally want the law to prohibit PLAs.

PLAs ensure a steady flow of highly trained construction labor, and agencies typically look to them as a mechanism for achieving cost savings on complex projects. New York State's School Construction Authority, for instance, was estimated to have saved \$44 million over a five-year period through the use of PLAs.<sup>94</sup>

PLAs also often serve as a mechanism for boosting local hiring and community development. Over the past two decades, more than 100 PLAs have been implemented that include requirements for local hiring, establishment of local apprenticeship programs, and preferential job access for women and minorities.<sup>95</sup> One such example is the construction of Nationals Park in Washington, D.C., which was built under a PLA, was completed in record time, and achieved the distinction of being the first professional sports facility certified as "green." Roughly 600 District of Columbia residents worked on the ballpark project, and 91 percent of all new apprentices brought onto the job were District residents. Thus, the PLA enabled the District to leverage its construction dollars into nurturing the city's skilled workforce of the future. Further, the Nationals Park PLA fostered a commitment of over \$200 million in contracts to local, minority-owned firms. None of this would have occurred without a PLA.

PLAs are not limited to the public sector; a significant number of private corporations—including Boeing, Disney, General Motors, Inland Steel, ARCO, Pfizer, and Yale University—have chosen to use PLAs because they see them guaranteeing high quality craftsmanship and timely, safe, and cost-efficient construction.<sup>96</sup> Toyota has used a PLA on every plant it has constructed in the United States.<sup>97</sup>

Despite these advantages, 10 states passed laws outlawing or restricting the use of project labor agreements in 2011–2012.<sup>98</sup> PLAs have never been required by statute; rather, they are an available option that state agencies may use if desired.<sup>99</sup> Each of the bills passed, then, does not overturn a government mandate but, on the contrary, imposes one by prohibiting public agencies from using PLAs even if those responsible for the project think a PLA is warranted. Furthermore, the statutes adopted in the past two years generally prohibit local governments—towns, counties, school districts, and other local entities—as well as states from using PLAs. For example, Arizona's SB 1403—passed with strong support from the state chapter of the Associated General Contractors—prohibits any public entity from using PLAs.<sup>100</sup> Many of these laws mandate harsh penalties for violations—public agencies in Idaho, for instance, face fines of up to \$100,000 for using PLAs. Thus, legislators have stripped from both state and local officials the right to use one tool of construction management that private corporations as well as public agencies have historically found to increase efficiency.

Hypocritically, the ALEC-affiliated Associated Builders and Contractors attacks laws that enable PLAs, such as one in California that prohibits local government bans on PLAs, because they "interfere with local control"

even as ALEC and ABC promote bans on PLAs that constitute much greater interference with the rights of local governments. The real issue is hostility to collective bargaining as a route to higher wages.

### **The attack on prevailing wage laws**

Prevailing wage laws were first adopted by state legislatures in the late 19th and early 20th centuries as a means of guaranteeing that publicly funded construction does not undermine wage standards in local communities.<sup>101</sup> Thirty-two states plus the District of Columbia now uphold some form of prevailing wage law.<sup>102</sup>

Such laws require that states survey construction employers to determine the wages and benefits provided for various skilled occupations. The typical rate for each occupation is deemed the “prevailing” wage for that local area. Publicly funded construction projects are then required to pay these wage levels to all workers employed on the project.<sup>103</sup>

Prevailing wage laws in no way require that work be performed by union members or under a union contract. Rather, by establishing a level playing field regarding employee compensation, such laws encourage a constructive competition—based on high skills, effective management, and business acumen—rather than a destructive competition based on cutting wages to the lowest level possible.

Perhaps unsurprisingly, non-union contractors whose primary competitive advantage lies in low wage rates have long advocated the repeal of prevailing wage laws. In 2011–2012, five states passed laws that significantly scaled back prevailing wage standards, ranging from complete repeal to modifying the extent of the law’s coverage or the method of calculating mandated wage rates.<sup>104</sup> In Louisiana, Arizona, Iowa, and Idaho—all states that have no prevailing wage laws—legislators adopted statutes proactively prohibiting cities, counties, or school districts within the states from adopting their own local wage standards.<sup>105</sup>

Even where prevailing wage laws were modified rather than repealed, this action appears to have been taken as a first step toward the ultimate goal of repeal. ALEC’s explicit goal is to abolish all prevailing wage laws in all jurisdictions, and it promotes model legislation to that end.<sup>106</sup> Where that is not politically possible, however, the organization embraces half-measures as steps along the way toward the end goal.<sup>107</sup>

For example, Wisconsin retained its prevailing wage law, but legislators in 2011 raised the threshold at which wage requirements apply, insisted that private projects built with public funding are not required to pay prevailing wages, and prohibited localities from enacting their own wage standards—including retroactively striking down a Milwaukee ordinance that established local prevailing wages and gave local contractors preference in bidding on large projects.<sup>108</sup> The broad pattern of legislation across the states suggests that such half-measures do not constitute true alternative policy solutions, but merely rest stops and halfway houses on the road to a future where construction workers will bid against each other, with no wage floor and no public standards defining fair pay.

### ***Economic impact of repealing prevailing wage laws***

It is critical to note that prevailing wage laws are not strictly a union issue. They benefit both union and non-union employees as well as their broader communities, as affected workers' increased purchasing power leads to expanded consumer demand in the local economy.<sup>109</sup>

There is no central data source that measures the share of state and local construction performed by union and non-union workers. Data from the Bureau of Labor Statistics show that, in the states with prevailing wage laws, unions represent an average of 18.8 percent of the construction workforce. This estimate is likely low because it includes administrative and managerial employees employed by firms in this industry. The union share of actual construction workers is thus likely closer to 25 percent. As a conservative estimate, one might project that unionization on public works is double the rate in the industry as a whole, which would mean that 50 percent of publicly funded construction work in these states is done by non-union workers.<sup>110</sup>

Collectively, the states with prevailing wage laws include a total of just over 800,000 unionized construction workers.<sup>111</sup> If prevailing wage work were equally spread out across this workforce, along with an equal number of non-union workers, this would mean that state prevailing wage laws affect over 1.6 million construction workers across the country—half union, half non-union. Based on estimates from the conservative Mackinac Center, whose report serves as one of corporate advocates' primary measures of prevailing wage impacts, the effect of these state laws would be to increase annual earnings by over \$2,800 for each of those 1.6 million workers.<sup>112</sup> Thus, if the Mackinac Center's methodology is accurate, those who call for repeal of prevailing wage laws are advocating a wage cut amounting to nearly \$3,000 per year for hundreds of thousands of non-union as well as union construction workers, spread all across the country in communities that look to this industry as a key source of decently paying jobs.

If attacking prevailing wage laws is not simply an anti-union strategy, what explains the vehemence of corporate lobbies' activism on this issue? The campaign to dismantle prevailing wages doubtless reflects non-union contractors' desire to drive higher-wage competitors out of business. In addition, prevailing wages threaten to raise the economic expectations of the non-union workforce. One conservative think tank explains that "many contractors who are paying market wages to their employees are reluctant to bid on public works construction projects. It is difficult to explain to an employee why he or she is making more money one day working on a public works project than the next day, doing exactly the same work on a private job."<sup>113</sup> The difficulty is doubtless increased by employees' realization that union workers get paid the higher wage every day of the year, while they—as soon as the public works project is over—will go back to earning much less. By eliminating prevailing wage laws, non-union employers may hope to muffle their own employees' demand for improved treatment.

In addition, the attacks on PLAs and prevailing wage laws must be seen in the context of broader efforts to dismantle labor market protections for both union and non-union employees in the construction industry—beginning with eliminating state licensing requirements for electricians and plumbers. Licensing

requirements limit the supply of skilled labor and enable licensed tradespeople to command higher wages. Thus, ALEC promotes the “Professional Licensure and Certification Reform Act,” which bans occupational licenses that “protect a particular interest group from economic competition.”<sup>114</sup> The organization—whose membership includes the Associated Builders and Contractors—likewise argues that occupational licensing violates “the fundamental civil right... [of] individuals to pursue a chosen business or profession”; ALEC’s “Economic Civil Rights Act” prohibits any and all occupational licenses unless they are “demonstrably necessary ... to legitimate public health, safety, or welfare objectives.”<sup>115</sup>

Finally, the Associated Builders and Contractors and Associated General Contractors are both members of the Chamber of Commerce–sponsored “Essential Worker Immigration Coalition” (EWIC), which advocates for the right of construction contractors to import large numbers of temporary “guest workers” to serve as a low-wage construction workforce. In testimony before Congress, the EWIC specifically identified construction as one of the key industries in which, contractors claim, they cannot find sufficient domestic labor.<sup>116</sup> The danger of this proposal is not the presence of immigrant workers in the construction industry, but that immigrants would be forced to work under conditions of intimidation and without the labor rights afforded citizens. The proposal favored by EWIC would import temporary workers with a visa not to the United States but to a specific employer—who could deport employees at will. Under such conditions, wages in the construction industry would be driven down by locking low-wage immigrants into a legal status where they will be afraid to ever complain, write a letter to the editor, speak to a politician, organize a protest, or join a union. They are thus more likely to accept wages and working conditions that citizens would not tolerate, and in this way will serve to depress labor standards across the industry. Therefore, as with the attacks on public-sector employee unions, it appears that the assaults on union standards in the construction industry are not part of an agenda to improve life for non-union workers, but are rather the leading edge of an agenda that, if fully realized, would drive down labor standards for millions of non-union employees across this industry.

## **The corporate-backed legislative agenda for non-union private-sector workers**

The paper now turns to an examination of the corporate-backed legislative agenda for the 93 percent of private-sector workers not represented by a union. As discussed previously, legislative attacks on public employee unions have often been presented as actions motivated by a desire to help hard-working private-sector employees. The track record of the past two years, however, shows that the same corporate lobbies that play such a central role in the attack on public-sector unions are also engaged in a broad assault on the employment standards and labor rights of non-union private-sector workers, far beyond the construction industry.

In 2011–2012, four states passed laws restricting the minimum wage, four lifted restrictions on child labor, and 16 imposed new limits on benefits for the unemployed. With the support of the corporate lobbies, states also passed laws stripping workers of overtime rights; repealing or restricting rights to sick leave; and making it harder to sue one’s employer for race or sex discrimination, and easier to deny employees’ rights by classifying them as “independent con-

tractors.” These efforts have the practical effect of undermining workers’ ability to earn a decent living. The following sections provide an overview of the corporate assault on the laws that define labor standards for the vast majority of Americans, who work without the protection of a union contract.

## ***Minimum wage***

There are few institutions that affect the lives of low-income workers more directly than the minimum wage. Because the federal minimum wage is not indexed to inflation, American workers endure wages significantly below those of their counterparts in past decades. In real terms, the federal minimum wage peaked in 1968; if that wage had kept pace with inflation, it would now be set at \$9.96—37 percent above its actual level.<sup>117</sup> As of 2011, more than 20 percent of American workers made less than this amount.<sup>118</sup> Corporate lobbies’ success, year after year, in defeating efforts to adjust the minimum wage for inflation means that the country’s lowest-wage workers are collectively earning tens of billions of dollars less per year than their counterparts were 45 years ago.<sup>119</sup> Yet ALEC, the Chamber of Commerce, and other corporate lobbies remain steadfastly opposed even to adjusting existing minimum wages for increases in inflation.

While the minimum wage has failed to increase in line with overall inflation, it has fallen even further behind the costs of critical needs such as education and health care—as these costs have risen faster than the general inflation rate. Indeed, the number of hours low-wage workers must toil in order to meet their basic needs has expanded to an untenable point.<sup>120</sup> In 1979, for example, a college student had to work 254 hours at minimum wage in order to pay one year’s tuition at a public university; by 2010, an equivalent student had to work more than three times as long—923 hours—to achieve the same goal. A single parent earning minimum wage in 1979 needed to work 329 hours to pay for his or her family’s annual health insurance policy; by 2010 the equivalent parent needed to work 2,079 hours—40 hours a week, 52 weeks a year—to pay for family health insurance, with nothing left over for any other need.<sup>121</sup>

The inadequacy of current minimum wages is even more stark when compared with increases in worker productivity. Over the past five decades, productivity has steadily increased, and according to standard economic theory, wages should increase roughly on par with productivity increases—indeed, this was the case until the 1970s. But in recent decades, wages have largely remained flat even while productivity and profits have increased, as workers have proved increasingly unable to secure raises through either collective bargaining in the workplace or progressive measures in state legislatures. If the federal minimum wage had kept pace with productivity increases since 1968, it would now be set at \$18.67—two-and-a-half times its current value.<sup>122</sup>

Multiple academic studies show that states can increase minimum wages without risking job loss.<sup>123</sup> At the country’s 50 largest low-wage employers, times are good for those at the top: Executive compensation averaged \$9.4 million in 2011, and firms returned nearly \$175 billion to shareholders in dividends and share buybacks.<sup>124</sup> Wal-Mart—the country’s largest low-wage employer with a long record of participation in ALEC—remained profitable throughout the Great Recession, paying its CEO \$18.1 million and spending \$11.3 billion on dividends and share buybacks in 2011.<sup>125</sup> Yet the inability of the company’s million-plus employees to support their families without public assistance poses an ongoing and growing danger both for these families and their communities.

Unsurprisingly, the minimum wage is one of the few areas of bipartisan consensus, with support from a strong majority of voters in both political parties.<sup>126</sup> Yet the corporate lobbies have been fierce, and largely successful, in their opposition



to any increase in the minimum wage. In fact, they have sought every possible opportunity to lower existing minimum wages, or to create loopholes that exempt increasing numbers of employers from the requirements of the law.

ALEC promotes model legislation that calls for complete abolition of the minimum wage, arguing that such laws “represent an unfunded mandate on business by the government, and ... make it difficult for small business ... to hire new employees due to artificially high wage rates.”<sup>127</sup> The free market “forces of supply and demand,” the bill’s preamble insists, “are more capable than the government” of determining fair wages.<sup>128</sup>

For states not ready to repeal the minimum wage, ALEC offers a model bill to block any increase in the wage rate, as well as a separate resolution opposing any attempt to link minimum wages to the Consumer Price Index.<sup>129</sup> The resolution opposing inflation adjustment argues that the “minimum wage is ... an opportunity to learn valuable on the job training skills” that would be lost if adjusted upward for any reason, and reasserts that “the best government policies to aid low wage workers ... leave employers free to make wage decisions based on market conditions.”<sup>130</sup>

Finally, ALEC calls on states to actively ban localities from adopting their own minimum-wage standards. In many states, big cities are more progressive than the state as a whole. As a result, as of 2010, 123 cities or counties had adopted ordinances mandating minimum wages, living wages, or prevailing wages higher than the state standard.<sup>131</sup> To combat such initiatives, ALEC’s minimum-wage repeal bill abolishes any existing local minimum-wage laws in addition to the state statute itself, and forbids localities from enacting wage laws in the future.<sup>132</sup>

The U.S. Chamber of Commerce similarly opposes even the federal minimum wage, arguing that the law “is counter-productive to job growth” and asserting that, as a matter of principle, “we don’t think the government ought to be in the business of setting wages.”<sup>133</sup> The Chamber likewise opposes any increase to the minimum wage,<sup>134</sup> or any states or localities setting minimum-wage rates higher than the federal rate.<sup>135</sup> Indeed, the Chamber’s ranking of state employment policies marks down any state that does not actively prohibit localities from enacting living-wage laws.<sup>136</sup>

In the past two years, a series of laws were adopted advancing this agenda. New Hampshire legislators repealed their state’s minimum wage, overriding a gubernatorial veto.<sup>137</sup> Although the state already had the lowest minimum wage in New England, House Speaker (and ALEC member) Bill O’Brien argued that maintaining a state minimum wage sent “exactly the wrong message to employers that New Hampshire is going to make it harder to create jobs.”<sup>138</sup>

Other states stopped short of outright repeal, but took steps in that direction by enacting new exemptions or creating subminimum wages for new categories of workers. In a bill sponsored by former House Majority Whip Shantel Krebs, and heavily promoted by the Restaurant Association, South Dakota repealed the minimum wage for much of its summer tourism industry, exempting any “amusement or recreational establishment” that operates for less than seven months out of the year.<sup>139</sup>

Maine made it easier for employers to classify workers as disabled and thus pay them a subminimum wage. Previously, a disabled person could apply for a state certificate permitting them to work for less than minimum wage for a period of one year. The new law allows employers, rather than employees, to apply for the certificate, provides certificates for multiple employees, and doubles the length of time employees can be paid subminimum wages. Further, rather than the state setting the subminimum wage, the new statute allows employers themselves to determine how disabled employees are, and therefore how low a wage each deserves.<sup>140</sup>

Indiana heeded ALEC's call and passed legislation—strongly supported by the state Chamber of Commerce—that prohibits local governments from adopting a minimum wage higher than the state's; Indiana followed the model set earlier by Florida legislators, who adopted a similar ban in 2003.<sup>141</sup> In 2013, Mississippi—which has no state minimum wage—went even further, adopting a law that bans cities and counties within the state from adopting any minimum wage, living wage, or paid or unpaid sick leave rights for local workers.<sup>142</sup>

In other states, the business lobbies tried but failed to advance legislation repealing or restricting state minimum-wage laws. However, these attempts serve to some degree as guideposts for the continuing campaign of the corporate lobbies, and we may expect to see these efforts resurrected in coming years. Most tellingly, in Nevada, Missouri, and Arizona, legislators sought to undo the will of voters who, in previous ballot initiatives, had approved indexing their state minimum wage to the inflation rate. In Nevada, the Retail Association joined the Las Vegas and Reno Chambers of Commerce in promoting a bill that would have removed minimum-wage standards—previously established by popular referendum—from the state constitution.<sup>143</sup> In Missouri, the Chamber of Commerce and other corporate lobbyists presented Republican leaders with a six-point plan that included capping minimum-wage increases, effectively cancelling a 2006 referendum that linked the minimum wage to the CPI.<sup>144</sup> In Arizona, 71 percent of voters supported a 2004 proposal indexing their state minimum wage, but in 2012 legislators attempted to abolish this requirement. This time, despite the vocal support of the Restaurant Association, legislators were forced to relent when the move generated broad popular criticism.<sup>145</sup>

### Minimum wage for tipped employees

The failure of minimum wages to keep pace with inflation has had particularly stark consequences for the 3.3 million Americans who work as waiters, waitresses, bartenders, and bussers. In 1966, the federal government established a subminimum wage for tipped employees, on the theory that tips would bring them up to the level of the standard minimum wage. At the time, the tipped wage was set at 50 percent of the regular minimum. However, the tipped wage has been frozen at \$2.13 per hour for more than 20 years, and now amounts to just 29.4 percent of the regular minimum wage.

The country's tipped employees are overwhelmingly female, and nearly half are 30 years old or older.<sup>146</sup> How these employees are treated varies by state. In 18 states, tipped workers are entitled only to the federal subminimum wage of \$2.13 per hour. Twenty-five states have established a tipped wage below the regular minimum wage, but higher than the federal subminimum. Only seven states mandate that tipped employees be paid the regular minimum wage.

The economic impact of subminimum wages is dramatic for these employees and their families. The poverty rate for waiters and waitresses—who comprise the bulk of all tipped employees—is 250 percent higher than that of the workforce as a whole. Furthermore, the share of waitstaff in poverty is directly related to state wage laws. In states where waitstaff receive the full minimum wage, 13.6 percent are poor; in states with a tipped wage set somewhere between \$2.13 and the federal minimum, waitstaff poverty is 16.2 percent; and in states that apply the federal subminimum wage of \$2.13, waitstaff poverty rises to 19.4 percent.<sup>147</sup>

The minimum wage is one of the few areas of bipartisan consensus. Yet the corporate lobbies have been fierce, and largely successful, in their opposition to any increase in the minimum wage.

Furthermore, even the subminimum wage for tipped employees is often extremely difficult to enforce. By law, if the combination of an employee's tips and wages do not add up to the regular minimum wage, the employer must make up the difference. However, responsibility for monitoring compliance typically rests with employees, who must record exactly how much they receive in tips during a workweek and how many hours they work, and then petition their employer to make up the difference if they are short.<sup>148</sup> In the normal disorder of everyday life, most employees are unlikely to maintain records that would stand up to legal challenge. This is all the more true for non-native English speakers and those with limited education. Even for those who do keep exact records, however, this simply enables them to make a request of their employers, who regularly reject such claims. Enforcing workers' rights even with proper documentation becomes a laborious, costly, and uncertain process.<sup>149</sup> For this reason, a 2008 survey suggests that as many as 30 percent of tipped employees do not receive even the subminimum wage from their employer.<sup>150</sup>

Yet corporate lobbies routinely resist attempts to increase the tipped minimum wage or strengthen employees' ability to effectively enforce their rights under law. In the past two years, two states sought to lower the tipped minimum wage, two others worked to redefine "tips" in ways that weaken employees' right to keep what they earn, and one state, while insisting that tips count as wages for income tax purposes, attempted to declare that they must not be counted for purposes of calculating workers' compensation benefits for waitstaff who are injured on the job.

Legislators in both Arizona and Florida sought to lower their states' tipped minimum wage. Both states maintain tipped minimum-wage standards below the regular minimum wage but higher than the federal tipped rate; the objective of legislators in both cases was to push tipped wages closer to the federal tipped rate. Neither state presented evidence that the current wage levels create economic harm. On the contrary, the National Restaurant Association identified Florida as having the third fastest-growing restaurant industry in the country, with record sales projected for 2012.<sup>151</sup> Furthermore, legislators in both states acted in direct contradiction to the will of voters, who had established state tipped minimum wages by popular referendum.

In 2006, 65 percent of Arizonans voted to raise their state minimum wage to \$6.75, with future increases based on the CPI.<sup>152</sup> Since pre-existing law set the tipped rate at \$3 per hour below the regular minimum wage, the 2006 vote set a floor of \$3.75 for tipped wages. Yet in 2012, House Majority Leader and ALEC member Rep. Steve Court introduced a bill that would have cut that rate by one-third, to \$2.53—in effect transferring \$1.22 of hourly earnings from employees to owners.<sup>153</sup> Ultimately the bill proved too unpopular and was withdrawn.<sup>154</sup>

In Florida, the Restaurant and Lodging Association—whose national parent organization is an active ALEC member—worked with legislative allies to introduce a bill that would have effectively cut the state's tipped minimum wage from \$4.65 to \$2.13.<sup>155</sup> This would appear to have been a violation of the state constitution, which was amended in 2004 when voters approved by 72 percent to 28 percent a clause setting the state's tipped minimum wage at \$3.02 less than the state regular minimum wage, which itself is indexed to inflation.<sup>156</sup> Nevertheless, the Restaurant Association protested that the state's \$4.65 tipped wage was "very unfair," insisting that "it's just going to be a matter of time before the back of this industry breaks. Minimum wage is killing them."<sup>157</sup> Thus, with the avid support of both the Florida Chamber of Commerce and Associated Industries of Florida, the Restaurant Association set out to contravene both the voters' will and the state constitution.<sup>158</sup>

While neither state's bill was enacted, they both provide a measure of how far employer associations may go to cut employee wages, and perhaps serve as a warning of future legislative offenses that should be anticipated.

A different strategy was attempted in Wyoming and Maine, where legislators sought to revise the legal definition of wages in order to divert tip income from employees to employers. In Wyoming, a bill co-sponsored by a group of ALEC-affiliated legislators and backed by the Restaurant Association would have given employers the right to force employees to pool their tips.<sup>159</sup> While employees may have previously pooled tips, this was done voluntarily. In many restaurants, bussers, who are legally considered tipped employees, in fact receive little tip income.<sup>160</sup> In such cases, employers are required to pay them the regular minimum wage. By forcing more highly tipped wait staff to pool earnings, employers may avoid this obligation—essentially cutting the take-home pay of wait staff by making them pay the bussers' wages, with employers pocketing the difference as increased profits.

In 2011, Maine legislators adopted a new law declaring that “service charges” do not legally constitute tips, and that they are therefore not the property of wait staff and may be taken by the employer.<sup>161</sup> The statute—sponsored by an ALEC task force member and supported by the Restaurant Association—does not require restaurants to notify customers that the “service charge” does not go to servers; many patrons likely believe this charge constitutes the gratuity, and therefore provide little if any additional tip.<sup>162</sup> As in Wyoming, then, the Maine law constitutes a direct transfer of income from employees to owners, accomplished through the latter's political power.

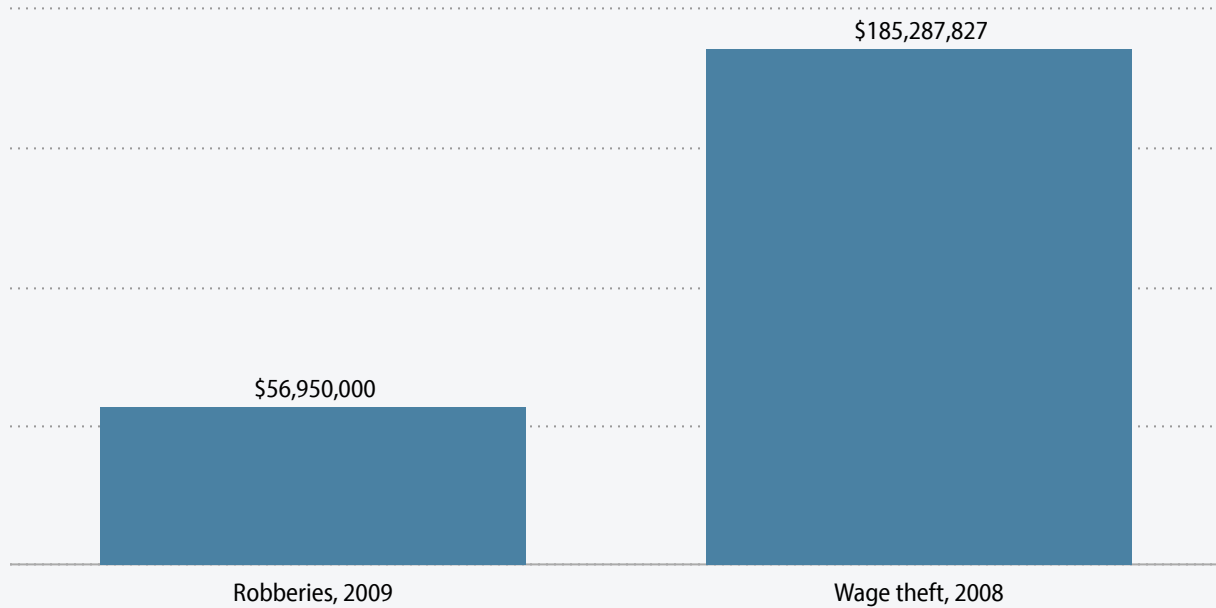
Finally, Montana's legislature passed a law mandating that tips could *not* be counted as wages for purposes of workers' compensation claims. This law—supported by the Montana Chamber of Commerce and celebrated as “historic” by the Restaurant Association but ultimately vetoed by the state's Democratic governor—would have thus allowed employers to pay subminimum wages on the grounds that tips constitute wages; then, if waitstaff are injured, it would have prevented customary tip income from being counted when calculating workers' compensation benefits.<sup>163</sup> The bill would additionally have made it nearly impossible for tipped employees to qualify for permanent, partial disability benefits unless they suffered a particularly severe injury. Legislators had earlier adopted a more far-reaching bill that declared minimum-wage workers ineligible for permanent, partial disability payments if they suffered only minor injuries; the bill reasons that they would still be able to find minimum-wage employment and thus could not have suffered any wage loss from the injuries.<sup>164</sup> By declaring that tips could not be counted in workers' compensation calculations, the new law would have designated all tipped employees as minimum-wage workers and thus ineligible for permanent, partial compensation for minor workplace injuries.

## ***Wage theft***

While low wages pose a critical problem, millions of Americans face an even more elemental challenge: the inability to obtain even those wages they have legally earned. The country suffers an epidemic of wage theft, as large numbers of employers violate minimum-wage, overtime, and other wage and hour laws with virtual impunity.

An extensive multi-city survey in 2009 revealed alarming patterns of illegally withheld earnings. Fully 64 percent of low-wage workers have some amount of pay stolen out of their paychecks by their employers every week, including 26 percent who are effectively paid less than minimum wage. Fully three-quarters of workers who are due overtime have part or all of their earned overtime wages stolen by their employer. In total, the average low-wage worker loses a stunning \$2,634 per year in unpaid wages, representing 15 percent of their earned income.<sup>165</sup> Indeed, the amount of money

### Value of wage theft\* compared with value of combined bank, gas station, and convenience store robberies, 2008–2009



\* Value of back wages illegally withheld by employers recovered by U.S. Department of Labor in 2008

**Source:** U.S. Department of Labor, *Wage and Hour Division: 2008 Statistics Fact Sheet*, December 2008; U.S. Bureau of the Census, *Statistical Abstract of the United States: 2012*, “Table 321, Robbery and Property Crimes by Type and Average Value Lost: 1990 to 2009”; U.S. Department of Justice, *Uniform Crime Reports* [Return A and Supplement to Return A Master Files], various years; Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Heckathorn, Mirabai Auer, James DeFilippis, Ana Luz González, Victor Narro, Jason Perelshteyn, Diana Polson, and Michael Spiller, *Broken Laws, Unprotected Workers: Violation of Employment and Labor Laws in America’s Cities*, National Employment Law Project, 2009

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stolen out of employees’ paychecks every year is far greater than the combined total stolen in all the bank robberies, gas station robberies, and convenience store robberies in the country, as shown in **Figure G**.<sup>166</sup> It is hard to imagine an employment policy that would have a greater impact on hard-working, low-wage Americans than rigorously enforcing already-existing laws.

Enforcement of wage and hour laws has long been strikingly lax. When the federal minimum-wage law was first established in 1941, there was one federal workplace inspector for every 11,000 workers. By 2008, the number of laws that inspectors are responsible for enforcing had grown dramatically, but the number of inspectors per worker was less than one-tenth what it had been in 1941, with 141,000 workers for every federal enforcement agent.<sup>167</sup> With the current staff of federal workplace investigators, the average employer has just a 0.001 percent chance of being investigated in a given year.<sup>168</sup> That is, an employer would have to operate for 1,000 years to have even a 1 percent chance of being audited by Department of Labor inspectors.

Budget cuts and political choices have exacerbated this crisis even further at the state level. A majority of states have reduced the number of staff dedicated to enforcement of wage and hour laws over the past five years.<sup>169</sup> In some states, this has been a consequence of broader budget cuts, while in others, enforcement of workplace laws has been singled out for defunding. Ohio's General Assembly, for instance, voted to completely eliminate funding for labor inspectors in 2011, leaving no staff to enforce state minimum-wage, overtime, child labor, or prevailing wage laws. Funding was subsequently restored by the state's Controlling Board, but even so, the state was left only six inspectors for the entire workforce. A seventh inspector was slated to begin work later in 2011, at which point each agent would have responsibility for 616,000 private-sector workers. Yet in that same year, the Ohio House adopted a budget that would cut the workplace enforcement budget by 25 percent over the next two years.<sup>170</sup>

Missouri House Speaker Steven Tilley likewise called for the complete elimination of funding for the state's nine labor investigators.<sup>171</sup> In 2010, Missouri's labor department collected \$200,000 in restitution for minimum-wage violations and \$500,000 for prevailing-wage violations, and issued 1,714 citations for child-labor violations.<sup>172</sup> Yet Tilley charged that investigators were being "overzealous," particularly in prosecuting complaints of employers cheating on prevailing wages.<sup>173</sup> Ultimately, Tilley compromised with the state's Democratic governor, and the adopted budget eliminated only two of the Division of Labor Standards' nine investigators rather than the entire staff.<sup>174</sup> In either case, meager enforcement staff means there is little meaningful protection for employees' rights under law.

Indeed, because the enforcement mechanisms are so weak and the penalties for stealing wages are generally so modest, even employers who have been found guilty and forced to pay penalties for wage theft are often undeterred from continuing these practices. A 2009 U.S. Department of Labor investigation found that one-third of employers who had previously violated wage and hour laws continued to do so.<sup>175</sup>

### **The battle over wage theft ordinances**

The Progressive States Network—a national organization of state legislators—has identified the key elements of effective policy for combating wage theft. These include requirements that employers keep detailed pay records and allow employees to receive a thorough explanation of how each paycheck was calculated; the right of state authorities to inspect employers' records; workers' private right of action to sue for unpaid wages as individuals or in class actions; protection of complainants against retaliation by their employers; and the provision of attorney fees, damages, and penalties as part of the enforcement process.<sup>176</sup> Yet corporate lobbies have been working hard to prohibit enforcement mechanisms such as these. In the past two years, these efforts were most highly visible in Florida.

A recent study from Florida International University estimates that \$60–90 million per year is stolen out of Florida workers' paychecks.<sup>177</sup> Yet since Florida's legislature abolished the state's Department of Labor in 2002, there are no state enforcement personnel to combat this problem.<sup>178</sup> Further, the state attorney general has failed to bring a single case of wage theft in recent years. Thus, the only means for seeking enforcement under current law is for employees to turn to the Legal Aid Society, which relies entirely on volunteer attorneys.<sup>179</sup>

In 2010, Miami-Dade County responded to this crisis by instituting the nation's first broad municipal wage theft law. Enforcement is carried out by the Department of Small Business Administration through a streamlined process similar to small claims courts; employers pay the costs of county hearings—thus enforcement is costless to taxpayers—and employees are entitled to recover up to double damages. In its first year, the county prosecuted over 600 claims of stolen

wages, and recovered over \$1.7 million in illegally withheld pay.<sup>180</sup> Based on this success, Broward County adopted a similar statute, and the model seemed poised to spread across the state.

Almost immediately following the adoption of the Miami-Dade ordinance, however, business lobbies began pushing legislators to overturn the ordinance and ban other localities from adopting similar laws. The Florida Retail Federation filed a lawsuit—ultimately rejected by the court—arguing that the wage theft ordinance was unconstitutional.<sup>181</sup> At the same time, business lobbyists set out to prevent other counties from taking action.

In 2011, Palm Beach County debated establishing a system similar to that of Miami-Dade. In one five-month period in 2011, Miami-Dade had recovered 46 percent of the disputed wages brought to its attention; by comparison, Palm Beach County, relying on Legal Aid volunteers, had recovered only 2.5 percent.<sup>182</sup> Business lobbyists suggested that the proposed Palm Beach County ordinance would create a costly new bureaucracy—despite county administrators reporting they could operate the program at little to no additional cost.<sup>183</sup> Florida Retail Federation spokeswoman Samantha Padgett further argued that “in these economic times it doesn’t encourage business development to add additional regulations.”<sup>184</sup>

At the end of 2012, county commissioners sided with business lobbyists and rejected the new ordinance in favor of an alternative proposal—promoted by the Business Forum and Associated Builders and Contractors and widely criticized by religious, immigrant, and labor organizations—that simply provides Legal Aid \$100,000 per year to supply volunteer attorneys for victims of wage theft.<sup>185</sup>

While local employer associations fought the Palm Beach ordinance, their statewide organizations pursued legislation that would repeal existing wage theft ordinances and prohibit similar measures in the future. The legislation—avidly supported by the Chamber of Commerce, Retail Federation, and other business lobbies—stipulates that “a county, municipality, or political subdivision of the state may not adopt or maintain in effect any law, ordinance, or rule that creates requirements, regulations, or processes for the purpose of addressing wage theft.”<sup>186</sup> The legislation was not ultimately adopted into law, and corporate lobbies received widespread criticism for the effort. Nevertheless, business advocates began gearing up for further preemption efforts. In 2013, a similar bill passed the state House of Representatives, with the Florida Retail Federation naming Rep. Tom Goodson “Representative of the Year” for his sponsorship, but it died in the Senate.<sup>187</sup>

Thus, in perhaps the single most impactful policy area for hard-working employees struggling to get by in the non-union private sector, corporate lobbies seek to deny employees any effective mechanism for ensuring they receive the wages they have legally earned. ALEC’s “Economic Civil Rights Act” insists that all Americans have a fundamental “right to earn an honest living,” invoking this right as an argument against licensing requirements for plumbers and electricians.<sup>188</sup> But if the “right to earn an honest living” means anything, it must include a right to be paid what you earn.

Corporate lobbies seek to deny employees any effective mechanism for ensuring they receive the wages they have legally earned.

## **Child labor**

In the debates among the 2012 Republican presidential candidates, Newt Gingrich famously criticized child labor laws as “stupid,” and specifically called for schools to replace unionized custodians with lower-wage student employees.<sup>189</sup>

Idaho was the first state to make Gingrich’s vision reality when it adopted a law allowing kids as young as 12 to be employed for up to 10 hours per week cleaning and performing other manual labor around their schools. In the Meridian district—which championed the new law—school district spokesman Eric Exline touted the program as a means of saving money by avoiding having to hire adults, and of teaching middle school students that “you have to be on time [and] you have to do what you’re asked, what your supervisor is telling you.”<sup>190</sup>

Wisconsin focused on older students—age 16 and over—but enacted much more sweeping legislation, abolishing all restrictions on the number of hours minors are permitted to work during the school year. Previously, 16- and 17-year-olds could not work more than five hours a day on school days, more than 26 hours per week during the school year, and more than six days in a row. Despite substantial evidence that increased workloads make it more difficult for students to concentrate in school, the new law frees 16- and 17-year-olds to work an unlimited number of hours per week, seven days a week, throughout the school year.<sup>191</sup> The bill’s passage was celebrated by the Wisconsin Grocery Association, which explained that grocers are not “trying to overwork these kids or create a sweatshop,” but “want to give kids that great first opportunity you get in a grocery store.”<sup>192</sup>

Maine followed in Wisconsin’s footsteps, if not going quite so far. The legislature first considered the “Enhance Access to the Workplace for Minors” Act, which would have created a subminimum wage of \$5.25 for anyone under 20 years of age and lifted all restrictions on the number of hours teenagers can work; the bill’s author argued that many youth “have no experience, and perhaps no work ethic, and don’t merit the minimum wage until they learn a job.”<sup>193</sup> This bill, however, proved too extreme even for Maine’s conservative legislature.<sup>194</sup> Instead, legislators adopted a less ambitious law that—with the strong support of the Maine Restaurant Association—expands the number of hours high school students can work from four to six per school day and from 20 to 24 per school week.<sup>195</sup> One of the bill’s sponsors explained that students “could get home from school at 3:00 and could work from 4:00–9:00. They’d still have plenty of time for homework. Most of these kids are generally up well past 10:00. They could work a 3:00–9:00 shift.”<sup>196</sup> Indeed, this legislator suggested that the very concept of child labor codes might be objectionable. “Kids have parents,” insisted Rep. Bruce Bickford. “It’s not up to the government to regulate everybody’s life and lifestyle. Take the government away. Let the parents take care of their kids.”<sup>197</sup>

Michigan likewise increased, from 15 to 24, the number of hours students may work during a school week.<sup>198</sup> The bill, sponsored by the House majority leader, was championed by a wide range of business lobbies and low-wage employers’ associations, including the Chamber of Commerce, Small Business Association, NFIB, Grocers Association, Lodging and Tourism Association, Licensed Beverage Association, and Association of Home Builders.<sup>199</sup> Perhaps most outspoken was the Michigan Restaurant Association which, despite a statewide unemployment rate of 10.6 percent, told legislators that “many restaurants cannot find enough adult labor to fill available positions” and need the teenagers in order to stay afloat.<sup>200</sup>

While Idaho, Wisconsin, Michigan, and Maine are the only states to have actually passed legislation rolling back child labor protections in the past two years, similar proposals were advanced in a variety of other states, including Ohio,



Utah, Minnesota, and Missouri, where State Sen. Jane Cunningham proposed allowing children of any age to work unlimited hours, and removing the state’s authority to inspect children’s working conditions.<sup>201</sup> Thus, the corporate lobbies seeking to undermine collective bargaining and unions’ political strength are also actively working to promote longer work hours for youth, and to use this labor force to undermine wage standards for adult employees. Unsurprisingly, like the construction industry, many of those advocating for expanded youth work hours—including the Restaurant Association, Hotel and Lodging Association, and Association of Home Builders—are also urging the federal government to allow them to import increased numbers of low-wage guestworkers.<sup>202</sup>

## Overtime

In several states, corporate lobbies sought to undo legal requirements to pay overtime rates for employees working more than 40 hours per week.

Maine stripped truck drivers and their helpers of the right to overtime pay, as long as companies pay them on a non-hourly basis.<sup>203</sup> Overtime pay is not only a critical source of income for truck drivers, but also an important brake on the incentive for drivers to operate extreme shifts. By contrast, the new law—sponsored by a representative who also opposed the minimum wage—provides an incentive to pay drivers per load delivered or mile driven, which in turn may encourage drivers to push themselves to unsafe limits of endurance.<sup>204</sup>

An Ohio bill promoted by the Chamber of Commerce would have given private employers the option to deny overtime pay for employees, and instead provide them “compensatory time” on a straight time, hour-for-hour basis.<sup>205</sup> The bill, which was introduced by two ALEC members and ultimately died in committee,<sup>206</sup> allowed such a substitution only if employees requested it in writing.<sup>207</sup> But the bill had no guarantee that employers would not condition preferable shifts on employees’ signing such statements, and was more generally riddled with loopholes. For instance, while employees could have accrued up to six weeks of compensatory time, the employer was not required to ensure that employees had the opportunity to actually use this time; thus, one might have accrued several weeks of compensatory time, but never have been granted permission to use it. If one had unused compensatory time left at the end of any given year, the bill stipulated that employees be paid for that time *at a straight time rate*. In this case, rather than paying employees a 50 percent wage premium for time worked over 40 hours per week, the employer would have paid them nothing until the end of the year and then pocketed the 50 percent overtime premium that would have been required under the old law.<sup>208</sup>

In Nevada, one of the few states that still require overtime pay for employees who work more than eight hours per day, business lobbyists sought to repeal this right.<sup>209</sup> The bill, co-sponsored by four ALEC-affiliated senators, did not ultimately become law.<sup>210</sup> It did, however, receive vocal support from Chamber of Commerce officials, who noted that the U.S. Chamber of Commerce graded Nevada’s employment law “very poorly,” in part because it required overtime after eight hours’ work. Abolishing the right to daily overtime, the Las Vegas Chamber of Commerce argued, “would significantly aid both employers and employees in achieving efficient and flexible scheduling.”<sup>211</sup> As in Ohio, though this initiative was not adopted into law, it helps identify the goals that corporate lobbies continue to pursue through state legislation.

## ***Misclassification of employees as “independent contractors”***

One of the most common means by which employment standards are lowered or evaded is the reclassification of employees as “independent contractors”—often leaving employees ineligible for unemployment insurance or workers’ compensation, and removing them from minimum-wage, overtime, and labor law protections. It is common for employers to inaccurately and illegally declare employees to be contractors. A 2000 study by the U.S. Department of Labor, for instance, found that 10–30 percent of audited employers misclassified workers.<sup>212</sup> In many states, there is no mechanism for workers to challenge their bosses’ designation except for filing unemployment or workers’ compensation claims—meaning one must be fired or injured before there is any legal avenue for contesting one’s status.<sup>213</sup> In some industries, misclassification has become so commonplace that well-meaning employers are under pressure to wrongly classify their employees in order to not be undercut by less ethical competitors.<sup>214</sup>

For employers, misclassification offers the added incentive of avoiding payroll, unemployment insurance, and workers’ compensation taxes; thus, misclassification affects state revenue as well as employees’ livelihoods. A study of New York State’s trucking industry, for instance, found that 18 percent of drivers are misclassified, resulting in the state losing \$88 million per year in workers’ compensation payments. At the federal level, a 2009 report from the Government Accountability Office estimated that misclassification costs the federal government nearly \$3 billion per year.<sup>215</sup> Yet the same corporate lobbies that stress the overriding importance of deficit reduction when cutting public services seem unconcerned by this expansion of deficits through illegal employer classification schemes.

States vary in their legal tests for distinguishing between employees and independent contractors, but the most common standard is the “ABC test.” By this definition, a person must satisfy three tests to be deemed an independent contractor:<sup>216</sup>

- No outside party controls or directs his work, either on paper or in fact.
- The service he provides is either outside the normal type of work that the client performs, or is outside the normal geographic area where the client performs services.
- The individual is customarily engaged in an independently established business, often measured by the fact that the contractor works for more than one client.

National corporate lobbies are seeking to dismantle this definition, thereby making it easier to classify employees as contractors. ALEC’s “Independent Contractor Definition Act,” for example, eliminates two of the three traditional criteria: It allows independent contractors to do work that is typically part of the employer’s work, and allows them to work for one employer only.<sup>217</sup>

The U.S. Chamber of Commerce likewise urges states to give employers wide leeway in determining employment status. The Chamber’s national ranking of state employment policy grades states on “the strength of acceptance of the independent-contractor relationship,” with the highest scores reserved for states that allow employers free rein in classifying the workforce.<sup>218</sup> Colorado, by contrast, was graded poorly for its “presumption of employee status,” and for having “created a complaint process for workers who believe they have been misclassified as independent contractors.”<sup>219</sup>

Recently, both Maine and New Hampshire took steps to put the ALEC and Chamber of Commerce philosophy into law. Until 2010, Maine maintained the traditional “ABC test.” In 2012, however, the state adopted a new test that elim-

inates the requirements that employees work for more than one client and perform work outside the core functions of the firm.<sup>220</sup> The new law was championed by both the Maine Chamber of Commerce and the National Federation of Independent Business.<sup>221</sup> The Chamber praised the bill for loosening the requirement that contractors exert complete control over their work process and for abandoning the requirement that contractors work for more than one client. Under the new law, the Chamber notes, while contractors must be allowed to take on work from other clients, “that right may be temporarily or self-restricted due to contract stipulations,” and “the person [may] work exclusively for one employing unit ... if he or she wishes.”<sup>222</sup>

New Hampshire likewise adopted a law weakening the standards required before one can be classified an “independent contractor.” Under previous law, one had to set one’s own price, provide the primary tools of the job, pay for work-related expenses, and derive one’s income from the difference between the price charged and the expenses incurred. In a 2012 law praised by the National Federation of Independent Business and deemed “one of the year’s most important” measures by the *New Hampshire Business Review*, all of these requirements were eliminated.<sup>223</sup>

In Ohio, a pair of ALEC Task Force members supported a bill that would have allowed transportation companies to require truck drivers to sign statements declaring themselves “independent contractors” as a condition of employment, and then deny them employee status even if they operate company-owned and -maintained vehicles and work under the direction of company managers.<sup>224</sup> Although the bill died in committee, it received vocal support from the Same Day Transportation Association, a coalition of courier trucking companies.<sup>225</sup>

## **Sick leave**

Apart from wages, one of the most fundamental labor standards shaping work life for low-wage employees is the ability to stay home in the event of illness without fear of termination. Nearly 40 million workers—almost 40 percent of the country’s private-sector workforce—currently have no right to even a single day of paid sick leave.<sup>226</sup> These employees commonly go to work sick, or leave sick children home alone, out of fear of dismissal. Even if they are not terminated, the loss of pay they suffer takes a dramatic toll—particularly since jobs without sick pay are concentrated among low-wage workers. Thus, a typical family of four with two working parents who have no paid sick leave will have wiped out its entire health care budget for the year after just three days of missed work.<sup>227</sup>

In the absence of federal action to address this problem, states and cities have begun to fashion their own solutions. San Francisco established the first local right to paid sick leave, approved by 61 percent of voters in a 2006 referendum. The law appears to have been an enormous help in allowing low-wage workers to care for themselves and their families—and contrary to the predictions of business lobbyists, there is no evidence of employees having misused their new rights.<sup>228</sup> Yet corporate lobbies remain adamantly opposed to the prospect of similar legislation in other jurisdictions, with the U.S. Chamber of Commerce arguing that a legal right to paid sick leave would “interfere with an employer’s ability to maintain a reliable, stable workforce, and ... exacerbate well-documented employee misuse of [medical leave laws].”<sup>229</sup>

Corporate lobbies have worked to defeat efforts at establishing a right to paid sick leave in New York City, Seattle, and Washington, D.C., and in the states of Connecticut, Maryland, Massachusetts, and Vermont.<sup>230</sup> In Louisiana, the legislature was more ambitious, preemptively banning any locality from establishing a right to either paid or unpaid sick leave. Wisconsin’s lawmakers went even further; in an effort supported by Wisconsin Manufacturers and Commerce, the legislature not only prohibited localities from voting to establish sick leave standards, but also retroactively abolished

the right to sick leave that had been established in Milwaukee, approved by 68 percent of voters in a 2008 referendum.<sup>231</sup>

In Florida, legislators in 2013 acted preemptively, enacting a statewide ban that prohibits any city or county from establishing a local right to paid sick leave.<sup>232</sup> The bill followed a campaign by community activists who gathered 50,000 petition signatures for a 2012 referendum that would have established sick leave rights for workers in Orange County, which includes Orlando. In response, the Orange County GOP chairman contacted a member of the county's Board of Commissioners asking for "one good faith straight face test reason to at least delay it long enough to keep it off the ballot in November. After that, the Legislature can deliver the kill shot."<sup>233</sup> Following intense opposition to paid sick leave rights by the Walt Disney Co., among others, the Board of Commissioners voted 4 to 3 to keep the proposal off the ballot. However, a judicial panel found the commissioners had violated the county charter and ordered the proposal placed back on the ballot; it was slated to be voted upon in August 2014.<sup>234</sup> To head off this vote by Orange County residents—and the possibility this might set an example for other counties—Disney, Darden (owner of the Olive Garden restaurant chain), and other corporations threw their weight behind House Majority Leader and ALEC member Rep. Steve Precourt, who successfully championed legislation that denies any county's voters the right to vote for local sick leave laws.<sup>235</sup>

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The corporate lobbies have likewise sought to preemptively block the establishment of sick leave rights for new classes of employees, and to scale back those rights already on the books. In New Hampshire, for instance, the legislature in 2012 considered a bill that would have required employers to provide health benefits to part-time employees on a pro-rated basis. The Chamber of Commerce publicly opposed the bill, and it died in the legislature.<sup>236</sup>

In Wisconsin, the state Family and Medical Leave Act (FMLA) provides employees with certain benefits that do not exist under federal FMLA law. With SB 8—co-sponsored by a pair of ALEC-affiliated legislators—lawmakers sought to strip Wisconsin employees' right to those more generous benefits.<sup>237</sup> Similarly, in 2011 Pennsylvania legislators—including a number of ALEC members—introduced a bill to roll back a provision in the state's Public School Code providing school employees up to 10 paid sick days per year.<sup>238</sup>

Thus employer associations and corporate lobbies have sought not only to lower the wage standards of non-union employees, but also to reduce their benefits and increase their insecurity.

### ***Workplace safety standards***

As corporate lobbies sought to roll back the union rights of both public- and private-sector employees, so too they worked to scale back regulations governing workplace safety and health. Like the offensive against working standards generally, these efforts were concentrated in states that had traditionally been relatively labor-friendly, but where corporate-backed legislators suddenly found themselves in a new position of unilateral political control.

In Michigan, the legislature adopted a package of bills—supported by the Chamber of Commerce, NFIB, and Michigan Manufacturers Association—that make it nearly impossible for state authorities to issue any workplace safety regulation that is more strict than existing federal Occupational Safety and Health Administration (OSHA) rules.<sup>239</sup> Michigan further prohibited state authorities from issuing any regulation protecting workers from repetitive motion injuries—a prohibition strongly supported by the state Chamber of Commerce, Restaurant Association, and NFIB.<sup>240</sup> In recent years, the dangers of repetitive motion injuries—which had not been identified or understood at the time the initial OSHA regulations were adopted—have been widely documented. It is estimated that 28,000 Americans a year suffer repetitive motion injuries on the job, with a majority losing more than 20 days of work as a result of their injuries.<sup>241</sup> The Institute of Medicine estimates that between \$45 billion and \$54 billion is lost each year due to forgone wages, taxes, and productivity for employees who suffer from work-related repetitive motion injuries or other musculoskeletal disorders.<sup>242</sup> Yet the business lobbies are determined to resist the expansion of OSHA regulations beyond the types of injuries that were identified when the legislation was first enacted in the 1970s. The Chamber of Commerce designated the prohibition on ergonomic regulations a “top priority” for the 2011–2012 session, with the Michigan Restaurant Association calling on legislators to ensure that “repetitive movements in the restaurant workplace... [will not be] subject to state regulation and MIOSHA penalties, in addition to workers’ compensation coverage, in the event an ‘injury’ took place.”<sup>243</sup>

Michigan’s bill follows ALEC model legislation, which argues that “state ergonomic regulations would place businesses in that state at a competitive disadvantage to businesses in other states.”<sup>244</sup> This, of course, is a problem that could be solved by adopting ergonomic safety standards at the federal level. However, ALEC is also on record opposing federal OSHA ergonomic standards—on the grounds that the federal OSHA should leave such issues to “the purview of the state legislative and administrative bodies.”<sup>245</sup> Thus, at each level of government, the corporations funding ALEC are seeking to block any expansion of these workplace safety protections despite the widely documented costs of ergonomic injuries. And in Michigan, they have succeeded.

## **Meal breaks**

The assault on labor standards has extended even to the right to meal breaks on the job. In 2012, the New Hampshire House of Representatives voted to repeal the requirement that employers give employees a 30-minute unpaid meal break after five consecutive hours of work.<sup>246</sup> The bill’s advocates suggested that the requirement amounted to unnecessary overregulation. In reality, even in states that require meal breaks, it is not unusual for employers to violate this right. In 2005, for example, Wal-Mart was found to have illegally denied lunch breaks to 116,000 current and former employees in California (whose state law requires a 30-minute unpaid lunch break for employees working six or more hours), and was forced to pay restitution totaling \$57 million in unpaid wages.<sup>247</sup> A 2008 survey found that 69 percent of low-wage workers who were entitled to meal breaks were denied part or all of their breaks, or had to work through their breaks in violation of the law.<sup>248</sup> Nevertheless, the state Chamber of Commerce spoke approvingly of the New Hampshire legislation.<sup>249</sup> A chief co-sponsor insisted that “it’s in [employers’] best interest to treat their employees well,” and since “everyone already does it... why do we need [the law]?”<sup>250</sup> When the primary sponsor was asked whether employers would not abuse the newfound license, he insisted that “there is always potential to misuse freedom.”<sup>251</sup> While these comments may appear extreme, they are in keeping with the views of the U.S. Chamber of Commerce, whose annual ranking of state employment policies gives extra marks for states that eschew required meal breaks.<sup>252</sup>

## ***Employment discrimination***

Alongside efforts to undermine standards for wages and working conditions, employer lobbies have also launched a policy offensive aimed at limiting employees' ability to protect themselves against race, sex, and other forms of illegal discrimination on the job. While such discrimination remains illegal in every state, corporate representatives have sought to erect a series of barriers making it increasingly difficult to prove charges of discrimination and, at the same time, have sought to restrict potential penalties for those employers who are, nonetheless, found guilty of discrimination.

The U.S. Chamber of Commerce has long opposed legislation that would allow employees to prove illegal discrimination based on an employer's track record of hiring and promotion, rather than requiring proof of individual supervisors' specific intent to discriminate. In a similar vein, ALEC promotes model legislation opposing comparable worth laws, which require that female-dominated occupations are paid the same as similarly skilled but traditionally male jobs. "A government mandate such as Comparable Worth," ALEC insists, "artificially drives up the costs of engaging in economic activity [and] invariably constricts job creation."<sup>253</sup>

Both organizations vigorously oppose statutes that allow victims of discrimination to sue for compensatory and punitive damages, rather than solely to recover back wages. When employees are dismissed for discriminatory reasons, they often experience related economic calamities such as losing a car or home, or incurring increased medical expenses due to personal and financial stress. Compensatory damages ensure that employees are made whole from such costs. Without such compensation and without courts' ability to impose punitive damages on particularly egregious offenders, employers are significantly freer to violate the law without fear of meaningful consequences. Nevertheless, the U.S. Chamber of Commerce insists that recognizing a right to such damages amounts to "further increasing the opportunity for frivolous legislation."<sup>254</sup> ALEC's model legislation likewise declares such rights "a serious economic threat to all employees and employers whose welfare depends on the prosperity that our free enterprise system affords."<sup>255</sup>

In the past two years, both Wisconsin and Missouri passed laws reflecting these views. In Wisconsin, legislation introduced by seven senators—all ALEC members—repealed the right of victims of employment discrimination to sue for compensatory and punitive damages.<sup>256</sup> This bill—signed by Gov. Walker in 2012—was passed with the vocal support of employer associations. The state's primary corporate lobby, Wisconsin Manufacturers and Commerce (formed from a merger of the Wisconsin Chamber of Commerce and National Association of Manufacturers), warned that the right to damages for discrimination victims "has had a negative influence on the Wisconsin business climate."<sup>257</sup> The National Federation of Independent Business further insisted that "the fear of becoming involved in a lawsuit causes ... small business owners to spend more time on liability issues ... than such vital business activities as introducing new technologies, evaluating changes in employee wages and benefits ... or looking for ways to cut costs. These are the job creating and job sustaining activities small employers should be engaged in – and not ... spending money on liability insurance and legal fees."<sup>258</sup> These organizations were joined by a wide array of employer groups calling for repeal of the right to damages—including the Wisconsin Builders Association, the Grocers Association, Hospital Association, Hotel and Lodging Association, Insurers Alliance, and Restaurant Association.<sup>259</sup> With

**The corporate political agenda includes one-sided access to the courts, in which citizens are free to file suit to undermine labor standards but not to enforce them.**

their newfound legislative allies, these organizations triumphed, leaving workers unable to recover either compensatory or punitive damages and significantly decreasing the penalty for employers found guilty of discrimination.

In Missouri too, business organizations lobbied both to make discrimination harder to prove and to restrict victims' rights to damages. This effort followed a meeting in early 2011 at which the Chamber of Commerce and other corporate lobbyists presented Republican leaders a six-point plan for legislative priorities, including making employment discrimination significantly more difficult to prove.<sup>260</sup> Under previously existing law, employees were entitled to back pay and damages if they proved that illegal discrimination was a "contributing factor" to their treatment on the job. Following the urging of the corporate lobbies, legislators replaced this standard with a requirement that employees prove discrimination was the "motivating factor" in their treatment; if discrimination were simply a "contributing factor," employers would not be liable for any form of compensation.<sup>261</sup> In addition, the bill strictly limited employees' right to collect damages even after companies were found guilty of discrimination.<sup>262</sup> While this legislation was vetoed by Missouri's Democratic governor, it remains a key goal of the state's Chamber of Commerce.<sup>263</sup>

These bills are intended to limit employee rights and reduce employee income while shielding employers. They have little to do with a desire to decrease litigation. In fact, in other instances, ALEC actively promotes new rights to litigate and win damages, attorneys' fees, and injunctive relief. Under ALEC's Economic Civil Rights Act, any individual would have the right to sue—and recover attorneys' fees—if a state or local government provides services that could be provided more cheaply by a private contractor, or if a state maintains licensing requirements that the individual believes are unnecessary.<sup>264</sup> The organization's Right to Work Act would create a private right of action for employees who believe they have been unfairly required to share in the costs of negotiating their union contract; they would be entitled to injunctive relief, damages, and attorneys' fees.<sup>265</sup> ALEC urges that any taxpayer have the right to sue, including recovering costs and attorneys' fees, if a government agency uses a project labor agreement.<sup>266</sup> If public employees' union dues are paid through electronic payroll deductions, and any portion of these is used for political communication, ALEC wants employees to have a private right to sue and recover double damages along with attorneys' fees.<sup>267</sup>

Thus the corporate political agenda includes one-sided access to the courts, in which citizens are free to file suit to undermine labor standards but not to enforce them.

## ***Unemployment insurance***

Along with seeking to undermine workers' rights on the job, corporate lobbies also worked to reform the unemployment insurance (UI) system in ways that cut benefits for those out of work, force the unemployed to accept lower-wage jobs, and use the threat of disqualification from receiving unemployment benefits as a means of increasing control in the workplace.

UI was established in response to the Great Depression as a means for hard-working Americans to survive periods of joblessness. In addition to providing much-needed relief to the families of the unemployed, UI also plays an important role in shaping negotiations between workers and employers. In the absence of UI, the unemployed would be desperate to take any job they could find, as quickly as possible, simply to guarantee *some* income. This is true even if a given job paid much less than one's skills and work history would warrant; even if it were outside one's field of training and offered little potential for promotion; and even if it were far from home, dangerous, or at hours that made it impossible to see one's family. This desperation would not only lead to harmful results for the families of such employees, it would

also lower wage standards throughout the local economy by flooding the labor market with desperate low-wage employees.

By providing a modicum of support, UI takes the edge off this desperation, and thus shifts the balance of power between employers and would-be employees in a subtle but significant manner. Those out of work still face daunting conditions and stiff pressure to find work as quickly as possible. But UI makes it conceivable to turn down the lowest-paying and most dangerous jobs that may be immediately available, in order to search for a position with better pay and conditions and that builds on one's established skills.

The corporate lobbies' legislative agenda has been to cut UI benefits by multiple measures—not simply to save tax dollars, but also to reverse the marketwide impact of UI, undercutting the bargaining power of potential employees and forcing more people to take lower-wage and less-desirable jobs.

The U.S. Chamber of Commerce argues that “higher unemployment insurance ... benefit levels results in lower levels of employment.”<sup>268</sup> The Chamber ranks each state's UI policy, reserving the highest grades for states that provide the most meager benefits to unemployed workers, require those out of work to go one week with no pay before being eligible for benefits, and set the lowest tax rates for employer support of the UI system.<sup>269</sup>

In addition, the Chamber encourages states to adopt strict requirements for the type of job search activity that the unemployed must conduct as a condition of receiving benefits.<sup>270</sup> Given that unemployment benefits averaged only \$300 per week in 2009–2010,<sup>271</sup> those out of work do not need much added incentive to look for a job. It is instructive that the Chamber promoted these strict requirements during the worst of the Great Recession, in 2009–2010, when unemployment averaged over 9 percent<sup>272</sup> and there were four to six official job seekers for every job opening.<sup>273</sup> In such an economy, strict job search requirements are unlikely to help many people shorten their route to a decent job. That such requirements are promoted even at times of high unemployment suggests that they serve an alternative purpose: pressuring workers to take any job offered, no matter how low the wages or how poor the conditions.

The strategy of lowering labor market standards by pressing the unemployed to take the first job offered is further reflected in the corporate lobbies' advocacy around education and training. For any individual, the goal of training is to acquire skills that set one apart from low-wage labor and enable one to compete for a higher-quality job. For some employer associations, however, this appears to be a lose-lose proposition: Employers pay taxes for workers to receive training while out of work, thereby encouraging program graduates to demand higher wages. Thus, ALEC opposed federal aid for unemployment insurance provided as part of the 2009 Recovery Act, in part because it “extend[ed] the length of benefits to individuals who participate in job training programs.”<sup>274</sup>

ALEC's ultimate goal for unemployment compensation may be glimpsed in its “Full Employment Act,” which would require that jobless Americans be forced to work at minimum wage—for public or private employers—in order to earn welfare, unemployment, and food stamp benefits. Anyone who turned down any minimum-wage job offered them would immediately be cut off from unemployment benefits.<sup>275</sup> Thus, ALEC's vision is not simply to save tax dollars by reducing public expenditures on UI, but to force workers into low-wage work rather than allowing them to exercise any leverage in the labor market. Furthermore, ALEC's proposal would provide employers with a steady stream of skilled, experienced, but low-wage labor that would further undermine the ability of workers—whether UI recipients



or not—to earn a decent living, as wages would inevitably be bid down through the presence of this stream of people forced to choose between minimum-wage work and hunger.

### The corporate-backed UI agenda in action

This agenda was embodied in a wide range of legislation over the past two years. Most of the new laws reduced the level of benefits provided, the number of weeks one can receive benefits, the UI tax rate paid by employers, or some combination of these. States also adopted increasingly strict requirements demanding that unemployed workers accept even low-wage job offers.

In 2011–2012, 16 states cut the value of weekly UI benefits or the number of weeks they are available.<sup>276</sup> For more than 50 years, nearly every state offered up to 26 weeks of UI benefits. Recently, however, eight states have permanently reduced the duration of support for those out of work.<sup>277</sup> The most extreme example is North Carolina, which in February 2013 cut the maximum number of weeks for collecting benefits from 26 weeks to between 12 and 20 weeks, reduced maximum weekly benefits from \$535 to \$350 (a 35 percent drop), and tightened requirements to qualify.

Additionally, Indiana simultaneously cut employer UI taxes by 25–33 percent and reduced the average benefit by 25 percent.<sup>278</sup> Wisconsin instituted a one-week waiting period before unemployed workers can start collecting benefits; across the state, this change was expected to take over \$40 million away from those recently unemployed.<sup>279</sup>

But in addition to simple benefit cuts, there are two other categories of UI “reform” that are noteworthy. First, states imposed stricter requirements on the type of jobs unemployed workers must accept. Three states (Arkansas, Maine, and Tennessee) forced people to get back to work sooner, and at lower pay, or be disqualified from UI. Maine reduced from 12 to 10 weeks the period during which unemployed workers may seek a job in their previous line of work and geographic area, after which they must expand their job search to other occupations and parts of the country.<sup>280</sup>

Under Tennessee’s new law, laid-off employees may hold out only 13 weeks for jobs that pay the same as their previous position.<sup>281</sup> After that, they must accept any job that pays at least 75 percent of their previous wage; the cutoff drops to 70 percent after 25 weeks and 65 percent after 38 weeks.<sup>282</sup> This is a costly change for workers. At a time of economic recession—such as in 2011, when 113,000 people in Tennessee, or nearly 40 percent of all those unemployed in the state, were out of work for at least 27 weeks—this full complement of workers would be forced back into the labor market at jobs paying two-thirds or less of their previous wages.<sup>283</sup>

To ensure these rules are strictly enforced, Tennessee’s statute requires that all UI recipients submit detailed weekly reports proving that they applied for at least three jobs per week—and further requires that the state Department of Labor audit at least 1,000 unemployed workers each week to ensure these procedures are strictly enforced. It is striking that, while business lobbies typically seek to defund and restrict the enforcement capacity of government agencies in general and labor departments in particular, passage of the Tennessee statute (strongly supported by both the NFIB and the Chamber of Commerce)<sup>284</sup> suggests that the business lobbies are not against public spending or regulatory capacity

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*per se*. They are against regulatory capacity that strengthens the hand of workers and citizens vis-à-vis large corporations. When the state functions to enforce discipline on employees to the benefit of employers, however, these same lobbies are happy to expand public budgets and state regulatory capacity.<sup>285</sup>

The most extreme attempt to force workers into low-paid work may be an Oklahoma proposal that would have required anyone receiving UI to provide 20 hours a week of unpaid “community service.”<sup>286</sup> This bill did not pass—but it fits with similar, more modest laws adopted elsewhere. In 2003, Georgia pioneered a program that encourages UI recipients to volunteer for unpaid work in private companies—for up to six weeks, 24 hours per week. Last year, Pennsylvania adopted the same model, dubbing the unpaid work “skill enhancement.”<sup>287</sup> For now, the programs are voluntary. But it is easy to imagine future initiatives that might, for instance, offer enhanced UI benefits only to those who have proven their dedication through unpaid labor.

In both Georgia and Pennsylvania, there is no requirement that employers hire participants at the end of the program, no prohibition on firing paid employees and replacing them with unpaid trainees, and—tellingly—no requirement that employers provide any actual training. Instead, work itself is considered its own training.

Here, the rhetoric once reserved for welfare recipients has been turned on the unemployed. When Bill Clinton and Newt Gingrich collaborated to “end welfare as we know it,” they made a sharp distinction between people on welfare and the unemployed. Welfare recipients were described as the undeserving poor, who needed to be weaned from unearned entitlements and taught the discipline of work. By contrast, unemployment insurance recipients were working- and middle-class Americans unemployed through no fault of their own, whose work ethic had been proven through long years on the job.

The prescription for welfare recipients was to force them to work—in any job, at any wage. States cut education programs on the theory that what poor people needed—all they needed—was the discipline of a boss. As the American Enterprise Institute argued, “Any entry-level job teaches the important skills of showing up for work, regularly and on time ... prepared to cooperate.”<sup>288</sup> Indeed, the politics of welfare reform partly turned on the willingness of middle-class UI recipients—proud of their own histories of hard work and self-support—to embrace the idea that people on welfare were qualitatively different from themselves.

Nearly 20 years later, however, the arguments used against welfare have been turned on the unemployed. Thus, for example, the conservative *National Review* now argues that “the longer people stay unemployed, the more they lose ... the habits of work.”<sup>289</sup> Economist and commentator Ben Stein likewise suggests that what the long-term unemployed most need is simply work itself—including learning to address people as “sir” and “ma’am” and being schooled in the importance of “not talking back.”<sup>290</sup>

The centrality of discipline to corporate-backed unemployment reform is even more apparent in recent laws that use UI to extend control over *current* employees. By radically rewriting UI eligibility requirements, a number of states have increased employers’ control over those who remain on the job.

Traditionally, unemployment benefits are provided to anyone laid off, unless they were fired for misconduct. Misconduct does not include incompetence or failure to meet production quotas. Rather, statutes traditionally defined misconduct only as “willful and wanton” refusal to meet performance standards. Under the new laws supported by business

lobbyists, employees who are fired for any violation of a workplace policy *other than* production quotas can be deemed guilty of misconduct and declared ineligible for UI benefits.

In Arkansas, for instance, the Society of Human Resource Managers (SHRM) lobbied successfully for a bill that significantly expanded the definition of “misconduct.” SHRM explains the impact of the state’s new law, noting that “under [preexisting] law, an employee discharged for poor performance is entitled to benefits unless the employer can prove the employee’s poor performance was intentional,” but under new law, “violations of behavioral policies (as opposed to violations of performance standards) are misconduct for which an employee is disqualified” from UI.<sup>291</sup> Under the new legislation, “misconduct includes violation of any behavioral policies of the employer as distinguished from deficiencies in meeting production standards or accomplishing job duties.”<sup>292</sup>

The new statute specifically identifies absenteeism as a factor that may disqualify employees from receiving unemployment benefits. Under the state’s previous law, one could not be disqualified based on absenteeism as long as the reasons for absence were meritorious; the statute mandated that “in all cases of discharge for absenteeism, the individual’s attendance record for the twelve month period immediately preceding the discharge and the reasons for the absenteeism shall be taken into consideration for purposes of determining whether the absenteeism constitutes misconduct.” The new law, however, mandates that “the individual will be disqualified if the discharge was pursuant to the terms of a bona fide written attendance policy with progressive warnings, regardless of whether the policy is a fault or no-fault policy.”<sup>293</sup> Thus, as long as employees received a written policy on absenteeism, any violation of that policy may not only lead to termination, but also disqualify one from unemployment benefits. Nearly 40 million Americans have no right to even a single day’s paid sick leave. Many of these workers also lack the right to take unpaid sick leave when they need it.<sup>294</sup> For such employees, the decision to stay home when sick, or when caring for a sick child, might now result not only in losing one’s job, but also in being declared guilty of “misconduct” and cut off from unemployment benefits. In a 2010 survey, 16 percent of American workers reported that they could be fired or otherwise punished for taking a sick day.<sup>295</sup> This number will likely increase in states where the NFIB and other business lobbies succeed in making it even less costly for employers to fire workers who get sick, or stay home to care for a sick child, as they no longer need fear these employees collecting UI and thereby raising employers’ future contribution rates.

In South Carolina, legislators in 2012 adopted a similar change, redefining “misconduct” to include “deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee ... [or] substantial disregard of the employer’s interest or of the employee’s duties and obligations to his employer.”<sup>296</sup> Thus, while UI still cannot be denied to employees fired for missing production quotas, it can be denied to employees fired for violating a host of other workplace rules. Employers’ policies governing workplace behavior—including attendance, dress codes, or even talking back to one’s supervisor—are assumed to represent standards that any employee is able to uphold and are therefore given the force of law. The failure to meet these standards, unlike the inability to meet production standards, is automatically considered a willful act. Under the new law, an employee who violates any rule that the employer has established—with the sole exception of “discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance”—is deemed ineligible for unemployment benefits.

Tennessee followed the same principle, with a bill the *Nashville Business Journal* described as backed with the “full-throated support” of the Chamber of Commerce and NFIB.<sup>297</sup> The authors of the new law—including a trio of ALEC members—redefine “misconduct” as any “violation of an employer’s rule, unless the claimant can demonstrate that: (A)

The claimant did not know, and could not reasonably know, of the rule's requirements; or (B) The rule is unlawful or not reasonably related to the job environment and performance."<sup>298</sup> The statute specifically cites "deliberate disregard of a written attendance policy" as grounds for deeming a worker ineligible for unemployment benefits.<sup>299</sup> The National Federation of Independent Business was quick to seize on this language, and quickly informed its member employers that a key "takeaway" from the bill is to "make sure you have a written attendance policy that each employee has reviewed and signed," so that any unexcused absences may be used to terminate employees without recourse to UI.<sup>300</sup> For employees with no sick leave, if they have to stay home with a sick child, they can be fired—and they are ineligible for UI.

So too, Florida legislators redefined "misconduct" to mean any "conscious" violation of "reasonable standards of behavior which the employer expects."<sup>301</sup> In the summer of 2012, a Florida lifeguard was famously fired for running to the rescue of a drowning man who was located outside the zone his employer was contracted to patrol in Hallandale Beach. "We have liability issues and can't go out of the protected area," explained his supervisor. "He knew the company rules."<sup>302</sup> Under the new law, such heroism may not only get Florida lifeguards terminated, but may also be deemed "misconduct" that might render the hero ineligible for unemployment insurance.

But the Florida statute—authored by ALEC member Rep. Doug Holder—goes even further, specifying that employees may be deemed ineligible for UI "irrespective of whether the misconduct occurs at the workplace or during work hours."<sup>303</sup> Thus, for example, if one's company has a policy against employees dating one another, or posting work-related comments on social media—and such prohibitions are legal—ignoring these rules may leave one cut off from UI.<sup>304</sup> In this way, the corporate lobbies are using UI reform not only to limit the prerogatives of the unemployed, but also to increase control over those currently on the job.

In all these ways, then, corporate advocates across the country have sought to reshape the UI system by cutting employer taxes and UI benefits (thus effecting a net transfer of funds from employees to employers); by pressing those out of work to take lower-wage and less-desirable positions, affecting both their personal lives and wage standards in the broader labor market; and by using the threat of UI eligibility to increase everyday control over those currently on the job. All of this, needless to say, will be felt primarily by non-union employees who rely on the law, rather than a collectively bargained contract, to establish their rights at work.

## **Conclusion: The corporate agenda on labor standards aims to weaken employees' position in the labor market**

This report reviews changes in labor policy and labor standards at the state level since 2010 and finds a consistent theme: The changes undermine the wages, working conditions, legal protections, or bargaining power of either organized or unorganized employees.<sup>305</sup> The consequence of this legislative agenda is to undermine the ability of workers to earn middle-class wages and to enhance the power of employers in the labor market. These changes did not just happen but were the results of an intentional and persistent political campaign by business groups.

A review of the legislated changes shows that the goal was not to protect hard-working taxpayers in the non-union private sector. The same policymakers and business associations leading the charge against public employee unions are also trying to undo minimum-wage, prevailing-wage, and living-wage laws; to eliminate employee rights to overtime

or sick leave; to scale back safety protections on the job; to make it harder for employees to sue over race or sex discrimination or even to recover the back wages they are legally owed; and to replace adult employees with teenagers and guestworkers. The consequences of all of these initiatives will fall primarily on non-union, private-sector employees. Indeed, apart from politicians' and lobbyists' own protestations that they are acting on behalf of non-union employees, it is challenging to identify a single piece of corporate-backed legislation that would strengthen rather than undermine the wages and working conditions of workers, union or non-union.

The assault on labor standards was not necessitated by the recent budget crises. Aggressive actions to slash public services and public employee compensation have often taken place in states with relatively healthy budgets such as Wisconsin. Furthermore, the same policymakers who have eroded labor standards have actively exacerbated fiscal shortfalls by enacting new tax cuts for the privileged and attempted to lock in drastic cuts as the new high-water mark for public services, forswearing the restoration of essential services even after the economy and tax revenues improve.

The pattern of attacks on labor standards confirms that the point is not to help workers but to enhance the position of employers. For instance, ALEC's model legislation opposing minimum-wage increases argues that "studies show that increasing starting wages lures high school students into the full-time work force, resulting in an increase in high school drop-out rates," and therefore that the minimum wage should be kept low to avoid having students work more and study less.<sup>306</sup> Yet in Michigan, Wisconsin, and Maine, ALEC, other business lobbies, and their legislative allies lifted restrictions on the number of hours high school kids can work during the school week, with the Restaurant Association arguing that high school students should be able to work almost 10 hours a week more during the school week because "employment teaches teenagers skills such as ... responsibility, problem-solving and customer service."<sup>307</sup> What unites these positions is the dedication to employer access to lower-waged workers—not the betterment of teenage workers.

Similarly, both ALEC and the Chamber of Commerce routinely insist that waiters and bartenders should not be paid the minimum wage because they make more than enough in tips. In Florida, the Chamber joined with the ALEC-affiliated Restaurant Association in advocating a bill to lower the minimum wage for tipped employees from \$4.65 to \$2.13, complaining that \$4.65 is "a very unfair model, when you're looking at an employee who makes way over" that in tips.<sup>308</sup> But in Montana, the Restaurant Association and Chamber of Commerce joined in advocating a law mandating that tips should not be counted as wages for the purpose of determining how much workers' compensation tipped employees must be paid in the event of injury on the job.<sup>309</sup> In both cases, the end result is less income for the workers and lower costs for employers.

It is useful to note that this assault on labor standards is not simply a desire to limit government's involvement in the labor market. Rather, the issue is on whose behalf the government intervenes. This is most clearly seen in examples such as Tennessee's mandate that the state Department of Labor conduct 1,000 audits per week to ensure that unemployed workers are aggressively seeking new jobs and not turning down any offer the state deems reasonable. Conservative legislators and the business lobbies are willing to significantly expand state bureaucracies—even departments of labor—when they serve to discipline workers. It thus appears that the goal is not to limit government bureaucracy *per se*, but specifically to limit government functions that strengthen the hand of workers or ordinary citizens in the labor market.

Conservative officials frequently tout the importance of local control.<sup>310</sup> Yet this principle is routinely ignored in the interest of lowering labor standards, with local wage laws a particularly common target. In 2011–2012, conservative legislators used their power at the state level to try to prevent any local governments from setting a higher standard for wages or benefits. This included banning localities from establishing their own minimum wages, prevailing wages, or living wages. In Wisconsin it also included banning localities from establishing sick leave policies more generous than the state’s. The bill specifically abolished the right to sick leave that had been established in Milwaukee, approved by 69 percent of voters in a 2008 referendum. The corporate lobbies are thus engaged in an effort to reshape the economy by reshaping democracy. Were a state to adopt the entire package of corporate-backed legislation, it would create a polity in which citizens could vote to prohibit the use of PLAs, but could not vote to require that PLAs remain an option for local government. Local residents could vote to turn a public school into a charter school—thereby voiding union contracts—but would be prohibited from voting to establish a living wage level for school employees, or to institute a preference for locally based contractors, or to establish a right to sue for unpaid wages. With each such bill that is adopted, corporate advocates are constructing a system of selective democracy in which the ability to improve labor standards through legislation is increasingly restricted.

It is challenging to identify a single piece of corporate-backed legislation that would strengthen rather than undermine the wages and working conditions of workers, union or non-union.

If the well-publicized attacks on public employee unions were not driven primarily by fiscal prudence, nor by a concern to safeguard the interests of hard-working non-union employees in the private sector, what *does* explain the breadth and vigor of such attacks? Why have large private corporations spent time, money, and energy attacking public employee unions? In part, public employment often raises wage and benefit standards in a local labor market that private employers are then pressured to meet; cutting public employee compensation makes it easier, in turn, to also reduce the pay of their private-sector counterparts.<sup>311</sup>

In addition to the impact on wages, it is important to note that the corporate lobbies’ efforts to curtail public services dovetail with anti-unionism, but are independent of it, as these efforts are undertaken with equal vigor in states where public employees have no right to bargain. With a few narrow exceptions—such as transportation infrastructure and public safety spending in some jurisdictions—the corporate lobbies have pursued an agenda that shrinks vital public services, including education, health care, libraries, recreation, parks, communications, and others. In part, it may be that corporate lobbyists are seeking to engineer what might be termed a “revolution of falling expectations” among the public—with the elimination of public services being part of that. If people no longer feel that—simply by virtue of being American citizens—they have a *right* to a decent education for their kids, a *right* to low-cost transportation to and from work, a *right* to check out books for free from a neighborhood library, a *right* to affordable tuition for college-aged kids and affordable health care for aging parents, or a *right* to retire after a lifetime of work with some modicum of security, the population may become less demanding of either employers or the government, and more accepting of the type of downward mobility that is likely to result from the dismantling of labor standards. The record of corporate-backed legislation suggests that the corporate lobbies’ political strategy may include this goal—tamping down the expectations and limiting the institutional capacity of working people—rather than simply tax cutting or fiscal conservatism.

Finally, unions constitute the primary political voice that serves as a counterweight to the corporate lobbies' agenda. The legislative agenda of ALEC, the Chamber of Commerce, and other corporate lobbies reflects very ambitious goals for remaking the terms of economic life. In addition to the labor standards discussed in this report, the Chamber of Commerce's legislative agenda includes, for instance, retaining the Bush-era tax cuts for the wealthy, particularly maintaining tax rates for capital gains and hedge funds' carried interest at rates significantly below normal income taxes; privatization of Social Security; adopting more NAFTA-style free trade treaties; importing large numbers of low-wage, temporary guestworkers; opposition to "Buy American" laws for federal procurement; opposition to a right to affordable health care; and opposing any limits on corporate political donations.<sup>312</sup> Even in its shrunken and weakened state, the labor movement remains the primary obstacle to realizing this agenda. Like most of the labor standards discussed in this report, these are not "union issues"—they have no relationship to union contract terms, labor law, or collective bargaining rights. Indeed, these issues primarily affect *non-union* workers. Yet the labor movement remains by far the most potent voice promoting an alternative vision to each of these corporate policy goals.

This may explain why so much effort has gone into an offensive aimed explicitly at eliminating union participation in the political process. In 2011–2012, legislation was introduced in 20 states to restrict employees' ability to contribute dues money to union-backed political activity. Such laws have little to do with protecting workers' freedom to decide what political causes their dues money supports. Both federal and state law already guarantee that no employee can be forced to contribute dues for political causes she opposes.<sup>313</sup> Indeed, a majority of laws prohibiting workers contributing dues for political activity were advanced in "right to work" states—meaning that all dues paid in these states are already, by definition, strictly voluntary. In multiple states legislators passed laws banning even those workers who voluntarily choose to contribute to union political activities from doing so at work, even when state fiscal officers have deemed the practice to be costless to the state.<sup>314</sup> The assault on unions is not part of an agenda to lift the living standards and political power of non-union workers; rather, it is part of a coherent agenda to do just the opposite.

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## About the author

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## Endnotes

1. While not technically outlawing public employee unions in the state, the bill is likely to lead to the same end. Public employee unions are prohibited from negotiating about anything other than wages; wage increases for local government employees are limited to the rate of inflation and must be approved by referendum of local voters; public employee unions can no longer require those who benefit from contracts to pay their fair share of the costs of administering them, and even those who volunteer to pay union dues cannot have those dues deducted through the state payroll system; all public employee unions are

presumptively decertified every year, and must win support in an annual employee referendum in order to remain in existence; and participation in any type of job action is grounds for immediate dismissal. The bill also completely stripped unionization rights from faculty and graduate student employees in the state university system. For one description of the bill's components, see Roger Bybee, "After Proposing Draconian Anti-Union Laws, Wisconsin Governor Walker Invokes National Guard," *In These Times*, February 15, 2011.

2. One of these states restricted the collective bargaining rights of private-sector employees who are nonetheless covered under state labor law. See endnotes 3 and 4 for more detail.
3. These states are Idaho, Illinois, Indiana, Louisiana, Maine, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, and Wisconsin. This list does not take account of states that enacted laws concerning public employees' wages and benefits, restrictions on public employees' union dues deductions, or restrictions on teachers' rights to tenure or seniority. Fourteen of these 15 states passed laws involving public employees. The case of Maine involves laws affecting private-sector employees who are nevertheless covered under state labor law. (See endnote 4 for more detail.)
4. As described in Danielle Carne and Martin Kehoe, *Subcommittee Report: States Without Bargaining Legislation*, American Bar Association, January 28, 2012, [http://www.americanbar.org/content/dam/aba/events/labor\\_law/2012/01/state\\_local\\_government\\_bargaining\\_employment\\_law\\_committee\\_midwinter\\_meeting/statelocal2012\\_carne\\_kehoe.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/labor_law/2012/01/state_local_government_bargaining_employment_law_committee_midwinter_meeting/statelocal2012_carne_kehoe.authcheckdam.pdf). Maine's repeal of farmworker collective bargaining rights was contained in LD 1207, [http://www.mainelegislature.org/legis/bills/bills\\_125th/chapters/PUBLIC565.asp](http://www.mainelegislature.org/legis/bills/bills_125th/chapters/PUBLIC565.asp). (The affected farmworkers are excluded from the National Labor Relations Act, so only the State of Maine can grant them organizing rights. The state granted these rights, but LD 1207 revoked them.) On the repeal of bargaining rights for childcare workers, see Susan Cover, "Maine House Backs End to Carers' Union Rights," *Portland Press Herald*, April 10, 2012, [http://www.pressherald.com/news/house-backs-end-to-care-providers-union-rights\\_2012-04-10.html](http://www.pressherald.com/news/house-backs-end-to-care-providers-union-rights_2012-04-10.html). (The affected childcare workers are not state employees, but are paid by state funds. They are not covered by the National Labor Relations Act, so only the State of Maine can grant them organizing rights, which it did in 2008. The 2012 bill revoked these rights.) The removal of bargaining rights for graduate research assistants was contained in Michigan's HB 4246, <http://www.legislature.mi.gov/documents/2011-2012/billenrolled/House/pdf/2011-HNB-4246.pdf>. On this point, see also Jack Spencer, "Snyder Signs Bill Clarifying that Graduate Students Are Students, Not Employees," *Capitol Confidential*, Mackinac Center for Public Policy, March 14, 2012, <https://www.mackinac.org/16596>. Michigan's emergency management law was initially included in HB 2414, and by May 2013 six cities had been taken over under the law's provisions. See Kate Abbey-Lambertz, "Michigan Emergency Manager Law In Effect In 6 Cities After Detroit Appointment," *Huffington Post*, March 15, 2013, [http://www.huffingtonpost.com/2013/03/15/michigan-emergency-manager-law-cities\\_n\\_2876777.html](http://www.huffingtonpost.com/2013/03/15/michigan-emergency-manager-law-cities_n_2876777.html).
5. Minnesota's bill, SF 247, removed from local public employees the right to choose to participate in a statewide insurance pool as one of their bargaining options; this bill was vetoed by the governor. Both the bill text and the governor's veto statement are available at <http://votesmart.org/bill/15204/39944/20301/mark-dayton-vetoed-sf-247-relating-to-the-public-employee-insurance-program#39944>.
6. In 2011, Indiana's budget bill, HB 1001, made collective bargaining by state agencies and strikes by state employees illegal. The bill summary provided by the House speaker can be found at <http://indianalawblog.com/documents/Summary%20of%20HB%201001%20-%20CCCR1.pdf>. In September 2013, an Indiana Superior Court judge ruled that the state's "right to work" law violated the state's constitution. The final determination on this issue will be rendered by the Indiana Supreme Court. See Tim Evans, "Indiana Attorney General Appeals Ruling that 'Right to Work' Law Is Unconstitutional," *Indianapolis Star*, September 23, 2013, <http://www.indystar.com/article/20130912/NEWS/309120046/Indiana-attorney-general-appeals-ruling-right-work-law-unconstitutional>.



7. Except where otherwise noted, legislation outlined in this paragraph is described in Danielle Carne and Martin Kehoe, *Subcommittee Report: States Without Bargaining Legislation*, American Bar Association, January 28, 2012, [http://www.americanbar.org/content/dam/aba/events/labor\\_law/2012/01/state\\_local\\_government\\_bargaining\\_employment\\_law\\_committee\\_midwinter\\_meeting/statelocal2012\\_carne\\_kehoe.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/labor_law/2012/01/state_local_government_bargaining_employment_law_committee_midwinter_meeting/statelocal2012_carne_kehoe.authcheckdam.pdf).
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9. U.S. Department of Education, "Provisional Data File: SY2010-11 Four-Year Regulatory Adjusted Cohort Graduation Rates," <http://www2.ed.gov/documents/press-releases/state-2010-11-graduation-rate-data.pdf>.
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11. Floyd Norris, "Under Obama, a Record Decline in Government Jobs," *New York Times*, January 6, 2012, <http://economix.blogs.nytimes.com/2012/01/06/under-obama-a-record-decline-in-government-jobs/>. Total state employment was reduced by 1.2 percent in 2011.
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13. Bryce Covert and Mike Konczal, *The GOP's State Project of Slashing the Public Workforce*, Roosevelt Institute, March 27, 2012, <http://www.rooseveltinstitute.org/sites/all/files/GOPProjectSlashingPublicWorkforce.pdf>.
14. Author's analysis of data presented in Elizabeth McNichol, Phil Oliff, and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, January 9, 2012, <http://www.cbpp.org/cms/index.cfm?fa=view&cid=711>.
15. Wisconsin Democracy Campaign, "Record \$37.4 Million Spent In Governor's Race," February 8, 2011, <http://www.wisdc.org/pr020811.php>. The Koch brothers, for instance, donated \$43,000 to Scott Walker's 2010 campaign and gave another \$1 million to the Republican Governors Association, which in turn spent \$3.4 million running attack ads against Walker's opponent. See Judith Davidoff, "Koch Brothers Quietly Open Lobbying Office in Downtown Madison," *Capital Times*, March 2, 2011, <http://www.opensecrets.org/pacs/expenditures.php?cycle=2010&cmte=C00236489>; Patrick Marley, Bill Glauber, and Steve Schultze, "Caller Posing as Major GOP Contributor Dupes Walker," *Journal Sentinel*, February 23, 2011, <http://www.jsonline.com/news/statepolitics/116737394.html>.
16. Tip O'Neill, *All Politics is Local* (Avon, Mass.: Adams Media Corporation, 1995).
17. Grover Norquist, "The Coming Bush Dynasty: It Will Flourish If It Knocks Down Key Clinton Pillars," *The American Spectator*, February 2001.
18. For instance, Wisconsin Senate Majority Leader Scott Fitzgerald explained that one of the key goals of the Walker bill was to defund unions in order to ensure that "President Obama is going to have a ... much more difficult time getting elected and winning the state of Wisconsin." See Lee Fang, "WI Senate GOP Leader Admits On-Air That His Goal Is to Defund Labor

Unions, Hurt Obama's Reelection Chances," *Think Progress*, March 9, 2011, <http://thinkprogress.org/politics/2011/03/09/149655/scott-fitzgerald-obama>.

19. National Institute for Money in State Politics, "Independent Spending in the States," January 2012, <http://www.followthemoney.org/database/independentspending.phtml>.
20. Center for Media and Democracy, "ALEC Corporations," [http://www.sourcewatch.org/index.php?title=ALEC\\_Corporations](http://www.sourcewatch.org/index.php?title=ALEC_Corporations). Following the murder of Trayvon Martin—broadly perceived as, in part, the result of ALEC-promoted "Stand Your Ground" laws—public outcry led to a rash of corporations resigning their membership in ALEC. As of September 2013, 50 corporations and six nonprofit groups that were formerly ALEC members announced that they had cut their ties with the organization, including both Wal-Mart and Coca-Cola (see Center for Media and Democracy, "Corporations That Have Cut Ties to ALEC," [http://www.sourcewatch.org/index.php/Corporations\\_that\\_Have\\_Cut\\_Ties\\_to\\_ALEC](http://www.sourcewatch.org/index.php/Corporations_that_Have_Cut_Ties_to_ALEC)). These corporations are noted as ALEC supporters in this report for several reasons. First, they were active ALEC supporters during the period that most of the bills discussed in this report were formulated and promoted. Second, although these companies distanced themselves from ALEC due to the controversy surrounding the Martin killing, they in no way distanced themselves from ALEC's economic or labor agenda, and it is possible that these companies will either renew ties with ALEC when the Martin controversy has died down, or find other but similar channels through which to promote the same policy goals. Finally, in some cases, these interests may be continuing to support ALEC's activities through other channels. For instance, while Wal-Mart resigned from ALEC, the Walton Family Foundation remains an active member (see Center for Media and Democracy, "ALEC Non-Profits," [http://www.sourcewatch.org/index.php/ALEC\\_Non-Profits](http://www.sourcewatch.org/index.php/ALEC_Non-Profits)). So too, many of the companies that resigned ALEC membership are members of the U.S. Chamber of Commerce, which in turn is an active member and supporter of ALEC. It is possible that some corporations may shield themselves from public criticism by resigning direct ALEC membership, but continue to support the organization's activities with funds channeled through the Chamber of Commerce or the many other trade associations that remain active ALEC members. See Center for Media and Democracy, "ALEC Trade Groups," [http://www.sourcewatch.org/index.php/ALEC\\_Trade\\_Groups](http://www.sourcewatch.org/index.php/ALEC_Trade_Groups).
21. For broad information on ALEC's members and organization, along with a compendium of ALEC's model legislation, see the Center on Media and Democracy's "ALEC Exposed" website, [www.alecexposed.org](http://www.alecexposed.org).
22. *Legislating Under the Influence: Money, Power, and the American Legislative Exchange Council*, Common Cause, 2011, <http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/MONEYPOWERANDALEC.PDF>.
23. Arthur Laffer, Stephen Moore, and Jonathan Williams, *Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index, 4th Edition*, American Legislative Exchange Council, 2011, [http://washingtonpolicywatch.files.wordpress.com/2012/08/rsps\\_4thedition.pdf](http://washingtonpolicywatch.files.wordpress.com/2012/08/rsps_4thedition.pdf).
24. People for the American Way, *ALEC: The Voice of Corporate Special Interests in State Legislatures*, 2011, <http://www.pfaw.org/rww-in-focus/alec-the-voice-of-corporate-special-interests-state-legislatures>. Corrections Corporation of America (CCA), which had long been active in ALEC before resigning its membership in 2010, at one point offered to purchase publicly owned prisons on the condition that the prison would be guaranteed "a minimum 90 percent occupancy rate." See Corrections Corporation of America, letter, <http://www.scribd.com/doc/81600081/Corrections-Corporation-of-America>. This offer is discussed in Greg Bluestein, "Corrections Firm Offers States Cash for Prisons," Associated Press, March 9, 2012. On CCA's collaboration with ALEC on drafting Arizona's draconian immigration law, see Laura Sullivan, "Prison Economics Help Drive Ariz. Immigration Law," *NPR Morning Edition*, October 28, 2010, <http://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law>.

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26. Arthur Laffer, Stephen Moore, and Jonathan Williams, *Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index, 4th Edition*, American Legislative Exchange Council, 2011, [http://washingtonpolicywatch.files.wordpress.com/2012/08/rsps\\_4thedition.pdf](http://washingtonpolicywatch.files.wordpress.com/2012/08/rsps_4thedition.pdf).
27. American Legislative Exchange Council, “Starting (Minimum) Wage Repeal Act,” *1996 Sourcebook of American State Legislation*, [http://www.alecexposed.org/w/images/3/34/1E10-Starting\\_%28Minimum%29\\_Wage\\_Repeal\\_Act\\_Exposed.pdf](http://www.alecexposed.org/w/images/3/34/1E10-Starting_%28Minimum%29_Wage_Repeal_Act_Exposed.pdf).
28. American Legislative Exchange Council, “Resolution in Opposition to Any Increase in the Starting (Minimum) Wage,” *1996 Sourcebook of American State Legislation*, <http://www.alec.org/model-legislation/resolution-in-opposition-to-any-increase-in-the-starting-minimum-wage>; American Legislative Exchange Council, *Resolution Opposing Increases in Minimum Wage Linked to the CPI*, 2008, <http://www.alec.org/model-legislation/resolution-opposing-increases-in-minimum-wage-linked-to-the-cpi/>.
29. Office of Governor Scott Walker, “Text of Governor Walker’s Budget Address,” March 1, 2011, [http://walker.wi.gov/journal\\_media\\_detail.asp?locid=177&prid+5668](http://walker.wi.gov/journal_media_detail.asp?locid=177&prid+5668); Steven Greenhouse, “Strained States Turning to Laws to Curb Labor Unions,” *New York Times*, January 4, 2011, <http://www.nytimes.com/2011/01/04/business/04labor.html?pagewanted=all>.
30. Bill O’Reilly, “Interview with John Kasich,” *The O’Reilly Factor*, February 23, 2011.
31. On this point, see John Schmitt, *The Wage Penalty for State and Local Government Employees*, Center for Economic and Policy Research, May 2010, <http://www.cepr.net/documents/publications/wage-penalty-2010-05.pdf>; and a series of state-by-state reports authored by Jeffrey Keefe, including *Are Wisconsin Public Employees Over-Compensated*, Economic Policy Institute Briefing Paper #290, February 10, 2011, [http://www.epi.org/publication/are\\_wisconsin\\_public\\_employees\\_over-compensated](http://www.epi.org/publication/are_wisconsin_public_employees_over-compensated). Data are based on a comparison of public and private employees with similar levels of education and training.
32. Corina Eckl, *State Budget Actions: FY 2007 and FY 2008*, National Conference of State Legislatures, April 2008, 36.
33. Henry J. Kaiser Family Foundation, “State Budget Shortfalls, SFY2010” [database], <http://kff.org/other/state-indicator/state-budget-shortfalls-sfy10/>.
34. Sylvia Allegretto, Ken Jacobs, and Laurel Lucia, *The Wrong Target: Public Sector Unions and State Budget Deficits*, University of California at Berkeley, Institute for Research on Labor and Employment, October 2011, [http://www.irle.berkeley.edu/research/state\\_budget\\_deficits\\_oct2011.pdf](http://www.irle.berkeley.edu/research/state_budget_deficits_oct2011.pdf); David Madland and Nick Bunker, *State Budget Deficits Are Not an Employee Compensation Problem*, Center for American Progress, March 10, 2011, <http://www.americanprogressaction.org/issues/labor/report/2011/03/10/9206/state-budget-deficits-are-not-an-employee-compensation-problem/>.
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37. Erica Williams, Michael Leachman, and Nicholas Johnson, *State Budget Cuts in the New Fiscal Year Are Unnecessarily Harmful*, Center on Budget and Policy Priorities, July 28, 2011, <http://www.cbpp.org/cms/?fa=view&cid=3550>. Texas police and firefighters have the right to collective bargaining if their employing city or town has voted by referendum to grant such rights.

38. Wisconsin's nonpartisan fiscal bureau issued a memo to legislators in January 2011 stating that the government had been on track to end the year with a surplus of \$121 million. Gov. Walker's claim that the state faced a deficit was primarily due to his enactment, shortly after assuming office, of \$142 million in tax breaks. See Brian Beutler, "Wisconsin Gov. Walker Ginned Up Budget Shortfall to Undercut Workers Rights," *Talking Points Memo*, February 17, 2011. The single largest component of the governor's new tax breaks was \$67 million in new tax deductions for companies that expanded employment within Wisconsin; however, since the value of these tax deductions ranged from \$92 to \$316 per job, they were widely criticized as too small to affect employers' hiring decisions, though large enough to affect the state deficit. See Scott Bauer, "Wisconsin Legislature Passes Tax Cut," Associated Press, January 26, 2011, [http://www.boston.com/business/taxes/articles/2011/01/25/wisconsin\\_legislature\\_passes\\_tax\\_cut/](http://www.boston.com/business/taxes/articles/2011/01/25/wisconsin_legislature_passes_tax_cut/); "Walker Gins Up 'Crisis' to Reward Cronies," *Capital Times* editorial, February 16, 2011, [http://host.madison.com/news/opinion/editorial/walker-gins-up-crisis-to-reward-cronies/article\\_61064e9a-27b0-5f28-b6d1-a57c8b2aaaf6.html](http://host.madison.com/news/opinion/editorial/walker-gins-up-crisis-to-reward-cronies/article_61064e9a-27b0-5f28-b6d1-a57c8b2aaaf6.html).
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50. John O'Connor and Sarah Gonzalez, "How Florida Schools Are Coping With Budget Cuts," National Public Radio, September 6, 2011, <http://stateimpact.npr.org/florida/2011/09/06/schools-run-out-of-easy-budget-choices>.
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billion in 2011, this, together with the changed treatment of capital gains and dividends, would have supplied all the revenue needed to close the aggregate 50-state budget gap.

55. Erica Williams, Michael Leachman, and Nicholas Johnson, *State Budget Cuts in the New Fiscal Year Are Unnecessarily Harmful*, Center on Budget and Policy Priorities, July 28, 2011, <http://www.cbpp.org/cms/?fa=view&id=3550>.
56. Erica Williams, Michael Leachman, and Nicholas Johnson, *State Budget Cuts in the New Fiscal Year Are Unnecessarily Harmful*, Center on Budget and Policy Priorities, July 28, 2011, <http://www.cbpp.org/cms/?fa=view&id=3550>. Text of Michigan's HB 4361, establishing the corporate tax reform, is at <http://www.legislature.mi.gov/documents/2011-2012/publicact/htm/2011-PA-0038.htm>. The bill was introduced by Rep. Judson Gilbert, whose affiliation with ALEC is documented in Center for Media and Democracy, "Michigan ALEC Politicians," [http://www.sourcewatch.org/index.php/Michigan\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Michigan_ALEC_Politicians). The cuts to education funding were mandated in HB 4325, which can be accessed at <http://www.legislature.mi.gov/documents/2011-2012/publicact/htm/2011-PA-0062.htm>.
57. Tricia Kinley (senior director of tax and regulatory reform at the Michigan Chamber of Commerce), "Testimony of the Michigan Chamber of Commerce Before the House Tax Committee," March 9, 2011, <http://www.michamber.com/files/michamber.com/Testimony%20on%20%20percent%20CIT%20HB%204361%20and%202.pdf>; National Federation of Independent Business, "Read NFIB's Letter to the Michigan Senate on Historic Tax Vote," May 12, 2011, <http://www.nfib.com/nfib-in-my-state/nfib-in-my-state-content?cmsid=47403>; Michigan Restaurant Association, "MRA Applauds Michigan Senate for Vote to Reform Taxes," press release, April 27, 2011, <http://www.michiganrestaurant.org/displaycommon.cfm?an=1&subarticlenbr=1344>.
58. HB 7185 increased the corporate income tax exemption from \$5,000 to \$25,000. The bill was co-introduced by Reps. Jimmy Patronis, Jr., Stephen Precourt, Clay Ford, and Scott Plakon. All four are ALEC members, with Patronis serving as ALEC state chairman. See Center for Media and Democracy, "Florida ALEC Politicians," [http://www.sourcewatch.org/index.php/Florida\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Florida_ALEC_Politicians). For Chamber of Commerce support, see Florida Chamber of Commerce, *How They Voted: Where Legislators Stood on the Florida Chamber's 2011 Business Agenda*, 13, [http://www.flchamber.com/wp-content/uploads/HowTheyVoted\\_2011.pdf](http://www.flchamber.com/wp-content/uploads/HowTheyVoted_2011.pdf).
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62. Erica Williams, Michael Leachman, and Nicholas Johnson, *State Budget Cuts in the New Fiscal Year Are Unnecessarily Harmful*, Center on Budget and Policy Priorities, July 28, 2011, <http://www.cbpp.org/cms/?fa=view&id=3550>.
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66. Americans for Tax Reform, *Guide to 2012 Initiatives & Referenda*, <http://atr.org/ballot#ixzz2Ki9E0SNz>. The measure was actually opposed by both Gov. Snyder and the state Chamber of Commerce, but not because they wanted the freedom to improve public services in the future. Rather, they feared it might tie legislators’ hands in crafting innovations, such as the governor’s recent bill that raised taxes on individuals in order to offset a tax cut for businesses.
67. Bruce Berke, “Business-Friendly Bills Passed Despite Distractions,” *Capitol Insight*, Greater Manchester Chamber of Commerce, June 2012, <http://archive.constantcontact.com/fs012/1102100181361/archive/1110192336720.html>.
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70. Ballotpedia, “Florida State Revenue Limitation, Amendment 3 (2012),” December 12, 2012, [http://ballotpedia.org/wiki/index.php/Florida\\_State\\_Revenue\\_Limitation,\\_Amendment\\_3\\_\(2012\)](http://ballotpedia.org/wiki/index.php/Florida_State_Revenue_Limitation,_Amendment_3_(2012)).
71. Erica Williams, Michael Leachman, and Nicholas Johnson, *State Budget Cuts in the New Fiscal Year Are Unnecessarily Harmful*, Center on Budget and Policy Priorities, July 28, 2011, <http://www.cbpp.org/cms/?fa=view&id=3550>. A summary of HB 2001 is at [http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/50leg/2s/summary/h.hb2001\\_02-16-11\\_astransmittedtogovernor.doc.htm&Session\\_ID=105](http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/50leg/2s/summary/h.hb2001_02-16-11_astransmittedtogovernor.doc.htm&Session_ID=105).
72. Of the bill’s 34 cosponsors, 23 were ALEC members, including Rep. Kirk Adams (Speaker of the House), Rep. Cecil Ash, Rep. Steve Court, Rep. Karen Fann, Rep. John Fillmore, Rep. Thomas Forese, Rep. Rick Gray, Rep. Jack Harper, Rep. Peggy Judd, Rep. John Kavanagh, Rep. Debbie Lesko, Rep. Nancy McClain, Rep. Javan Mesnerd, Rep. Justin Olson, Rep. Frank Pratt, Rep. Terri Proud, Rep. Amanda Reeve, Rep. Bob Robson, Rep. Andy Tobin, Rep. Steve Urie, Rep. James Weiers, Rep. Kimberly Yee, and Sen. Rich Crandell. See Center for Media and Democracy, “Arizona ALEC Politicians,” [http://www.sourcewatch.org/index.php/Arizona\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Arizona_ALEC_Politicians). For business lobbies’ support, see “Business Coalition in Support of HB 2001 and SB 1001” (letter to the Arizona legislature from 41 local Chambers of Commerce), February 16, 2011, [http://www.azchamber.com/assets/files/Press%20Releases/2011/Support%20Letter,%20HB%202001\\_SB%201001.pdf](http://www.azchamber.com/assets/files/Press%20Releases/2011/Support%20Letter,%20HB%202001_SB%201001.pdf); National Federation of Independent Business, “Huge Tax-Reduction Bill Passes Legislature, Signed by Governor,” <http://www.nfib.com/nfib-in-my-state/nfib-in-my-state-content?cmsid=56064>.
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- [6a6e-11e2-95b3-272d604a10a3\\_print.html](#). Texas' projected \$8.8 billion surplus is reported in Mark Whittington, "Texas Gov. Rick Perry Proposes Tax Rebate Constitutional Amendment," *Yahoo.com Contributor Network*, January 29, 2013, <http://news.yahoo.com/texas-gov-rick-perry-proposes-tax-rebate-constitutional-180900241.html>. Gov. Perry is quoted as describing the increased revenue as "excess tax receipts" in Awr Hawkins, "Gov. Rick Perry: Change State Constitution, Return Money to the People," *Breitbart.com*, January 30, 2013, <http://www.breitbart.com/Big-Government/2013/01/30/Gov-Rick-Perry-Change-State-Constitution-And-Send-Money-Back-To-The-People>. The governor described the state as having "billions still on the table after we've funded our services and met the needs of an ever-expanding population," and explained that a constitutional amendment is needed for such times when "we do bring in more than we need." Quoted in Peggy Fikac, "Perry Has a Surprise in His State of the State Address," *Houston Chronicle*, January 29, 2012, <http://www.chron.com/news/politics/article/Perry-has-a-surprise-in-his-State-of-the-State-4231648.php>.
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- 77.** Center for Media and Democracy, "Arizona ALEC Politicians," [http://www.sourcewatch.org/index.php/Arizona\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Arizona_ALEC_Politicians).
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- 79.** Text of the bill, HB 2571, is at <http://www.azleg.gov/legtext/50leg/2r/bills/hb2571h.pdf>. The law does not immediately strip all employees of civil service protections, but makes all new hires at-will, along with anyone who accepts a promotion. Only full-authority public safety officers will retain their civil service protections. As of 2012, 75 percent of state employees were covered by civil service protections; the governor's office projects that this number will shrink to 18 percent within four years. See Office of the Governor, "Governor Jan Brewer, Legislative Leaders Propose Sweeping Personnel Reform Plan," News Release, February 14, 2012, [http://azgovernor.gov/dms/upload/PR\\_021412\\_Personnel.pdf](http://azgovernor.gov/dms/upload/PR_021412_Personnel.pdf).
- 80.** The governor's office explains, "Supervisors should be empowered to hire the most talented job applicants without first having to wade through an arbitrary number of additional interviews. The State's best workers should be rewarded without having to wait for an across-the-board salary increase that applies to everyone without regard for performance." See Office of the Governor, "Governor Jan Brewer, Legislative Leaders Propose Sweeping Personnel Reform Plan," News Release, February 14, 2012, [http://azgovernor.gov/dms/upload/PR\\_021412\\_Personnel.pdf](http://azgovernor.gov/dms/upload/PR_021412_Personnel.pdf)
- 81.** Office of the Governor, "Governor Jan Brewer, Legislative Leaders Propose Sweeping Personnel Reform Plan," News Release, February 14, 2012, [http://azgovernor.gov/dms/upload/PR\\_021412\\_Personnel.pdf](http://azgovernor.gov/dms/upload/PR_021412_Personnel.pdf).
- 82.** CityTownInfo.com, "Phoenix, Arizona," <http://www.citytowninfo.com/places/arizona/phoenix>; City of Tucson, *Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2011*, <http://cms3.tucsonaz.gov/sites/default/files/finance/cafr11.pdf>. For Tucson, state employment includes employees of the University of Arizona.
- 83.** See, for instance, E. J. Perkins, "The Return of Boss Tweed?" Morrison Institute for Public Policy, Arizona State University, March 29, 2012, <http://morrisoninstitute.asu.edu/media/news-events/policy-blog-the-return-of-boss-tweed-1>.
- 84.** Arizona Chamber of Commerce and Industry, *2012 Legislative Wrap Up*, <http://www.azchamber.com/uploads/Legislative%20Wrap%20Up%202012%20FINAL%20for%20Website.pdf>.
- 85.** Farrell Quinlan, "Rewarding the Worth, Removing the Worthless," National Federation of Independent Business, March 3, 2012, <http://sonoranalliance.com/2012/03/13/rewarding-the-worthy-removing-the-worthless>.



86. Walker was recorded speaking with billionaire Diane Hendricks on January 18, 2011, in which Hendricks asked, “Any chance we’ll ever get to be a completely red state and work on these unions – ‘Oh, yeah,’ Walker broke in. ‘- and become a right-to-work?’ Hendricks continued. ‘What can we do to help you?’ ‘Well, we’re going to start in a couple weeks with our budget adjustment bill,’ Walker said. ‘The first step is we’re going to deal with collective bargaining for all public employee unions, because you use divide and conquer.’” See Jason Stein and Patrick Marley, “In Film, Walker Talks of ‘Divide and Conquer’ Union Strategy,” *Journal Sentinel*, May 10, 2012, <http://www.jsonline.com/news/statepolitics/in-film-walker-talks-of-divide-and-conquer-strategy-with-unions-8o57h6f-151049555.html>.
87. For instance, the Indiana Chamber of Commerce designated “right to work” its single most important legislative priority for 2012. See Indiana Chamber of Commerce, “Chamber Releases 2012 Top 10 Legislative Priorities,” December 14, 2011, <http://www.indianachamber.com/index.php/chamber-releases-2012-top-10-legislative-priorities>.
88. On the economic logic and impact of “right to work” laws, see Gordon Lafer and Sylvia Allegretto, *Does ‘Right to Work’ Create Jobs? Answers from Oklahoma*, Economic Policy Institute, Briefing Paper #300, March 16, 2011, <http://www.epi.org/publication/bp300/>; and Heidi Shierholz and Elise Gould, *The Compensation Penalty of ‘Right to Work’ Laws*, Economic Policy Institute, Briefing Paper #299, February 17, 2011, <http://www.epi.org/publication/bp299/>.
89. Owensboro, Kentucky, Chamber of Commerce, letter from Executive Vice President Jody Wassmer to Gary D. Osborne, secretary/treasurer, Owensboro Area Building and Construction Trades, September 8, 2005.
90. Richard Henderson, “Industry Employment and Output Projections to 2020,” *Monthly Labor Review*, U.S. Bureau of Labor Statistics, January 2012, <http://www.bls.gov/opub/mlr/2012/01>.
91. The Business Roundtable actually began as the Construction Users Anti-Inflation Roundtable, which sought to drive down wages in the construction industry. For a history of anti-union efforts by the Business Roundtable and Associated Builders and Contractors, see Thomas Kriger, *An Analysis of Associated Builders and Contractors (ABC)*, Labor Research Paper, National Labor College, May 2012, [http://www.knowyourabc.com/ULWSiteResources/abc/Resources/file/TJK\\_Reports/ABCResearchReport-FINAL5-31-12.pdf](http://www.knowyourabc.com/ULWSiteResources/abc/Resources/file/TJK_Reports/ABCResearchReport-FINAL5-31-12.pdf); Marc Linder, *Wars of Attrition: Vietnam, the Business Roundtable, and the Decline of Construction Unions* (Iowa City: Fanpihua Press, 2000), <http://ir.uiowa.edu/books/11/>; and David Moberg, “Union-Busting Is As Easy as ABC,” *In These Times*, June 5, 2012, [http://inthesetimes.com/working/entry/13321/union-busting\\_is\\_as\\_easy\\_as\\_abc\\_the\\_associated\\_builders\\_and\\_contractors](http://inthesetimes.com/working/entry/13321/union-busting_is_as_easy_as_abc_the_associated_builders_and_contractors).
92. PLAs may also afford project managers an opportunity to obtain project-wide concessions—such as no-strike clauses and reductions in premium pay—in return for agreeing to standard union compensation.
93. Fred Kotler, *Digging Into the Big Dig: The Central Artery/Tunnel Project – Is It Working?* Cornell School for Industrial and Labor Relations, September 2000.
94. Fred Kotler, *Project Labor Agreements in New York State II: In the Public Interest and of Proven Value*, Cornell University, School of Industrial and Labor Relations, May 2011, <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1035&context=reports>.
95. Maria Figueroa, Jeff Grabelsky, and Ryan Lamare, *Community Workforce Provisions in Project Labor Agreements: A Tool for Building Middle-Class Careers*, Cornell University, School of Industrial and Labor Relations, October 2011, [http://www.ilr.cornell.edu/news/upload/PLA-REPORT-10-6-2011\\_FINAL.pdf](http://www.ilr.cornell.edu/news/upload/PLA-REPORT-10-6-2011_FINAL.pdf).

96. Fred Kotler, *Project Labor Agreements in New York State: In the Public Interest*, Cornell University Industrial and Labor Relations School, March 2009; Connecticut State Building Trades, “Project Labor Agreement Inventory List,” [http://www.choosepla.com/downloads/PLA\\_Inventory\\_Final\\_Draft.pdf](http://www.choosepla.com/downloads/PLA_Inventory_Final_Draft.pdf); PLAs Work, “Impact,” <http://www.plaswork.org/Impact/Impact.aspx>.
97. Jeff Caldwell, “Project Labor Agreements – Toyota’s Way,” PLAs Work, [http://www.plaswork.org/Projects/Project-Focus/Toyota-and-PLAs-\(1\).aspx](http://www.plaswork.org/Projects/Project-Focus/Toyota-and-PLAs-(1).aspx).
98. States banning or limiting PLAs in 2011–2012 include Arizona, Iowa (by executive order), Idaho, Louisiana, Maine, Michigan, Tennessee, Kansas, Oklahoma, and Virginia.
99. In several states, a public agency must demonstrate economic gains from a PLA in order to be authorized to employ such an agreement.
100. Arizona Chapter of Associated General Contractors, “Senator Shooter’s Bill (SB 1403 Mandatory Project Labor Agreements Prohibition) Advances to House,” <http://www.azagc.org/azagc-news/senator-shooter’s-bill-sb1403-mandatory-project-labor-agreements-prohibition-advances-to-house/>.
101. Eight states adopted prevailing wage laws before the federal government: Kansas (1891), New York (1894), Oklahoma (1909), Idaho (1911), Arizona (1912), New Jersey (1913), Massachusetts (1914), and Nebraska (1923).
102. There are prevailing wage laws in Alaska, Arkansas, California, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Missouri, Massachusetts, Minnesota, Michigan, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.
103. There are some cases in which the prevailing wage may be set at the average wage for a given occupation in a certain geographic area. For instance, the federal prevailing wage is set at the average wage for an occupation unless half or more of the employees are paid a different wage.
104. States repealing or restricting prevailing wage laws include Alaska, Indiana, Louisiana, Ohio, and Wisconsin.
105. Idaho’s S 1006 bans localities from requiring any particular wage in public construction contracts (bill text available at <http://legislature.idaho.gov/legislation/2011/S1006.htm>). Nearly identical language is used in Louisiana’s SB 76 (bill text available at <http://www.legis.state.la.us/billdata/streamdocument.asp?did=756174>) and in Arizona’s SB 1403, prohibiting localities from requiring either prevailing wages or PLAs. The bill was strongly supported by the state’s chapter of Associated General Contractors. See Arizona Chapter of Associated General Contractors, “Senator Shooter’s Bill (SB 1403 Mandatory Project Labor Agreements Prohibition) Advances to House,” <http://www.azagc.org/azagc-news/senator-shooter’s-bill-sb1403-mandatory-project-labor-agreements-prohibition-advances-to-house>. Iowa’s prohibition on local prevailing wages was included in an executive order banning PLAs ([https://governor.iowa.gov/wp-content/uploads/2011/01/Exec\\_Order\\_69.pdf](https://governor.iowa.gov/wp-content/uploads/2011/01/Exec_Order_69.pdf)), issued by Gov. Branstad in 2011.
106. American Legislative Exchange Council, *Prevailing Wage Repeal Act*, 1995 Sourcebook of American State Legislation, reapproved 2013, <http://www.alec.org/model-legislation/prevailing-wage-repeal-act>.
107. Similarly, Michigan’s Mackinac Center for Public Policy, one of the premier think tanks in the corporate-funded State Policy Network, has spent many years advocating against prevailing wage laws. Total repeal of prevailing wage laws is the primary goal, the organization insists. However, “if policymakers are unwilling to repeal prevailing wage outright, there are a number of ways to reduce the scope of Michigan’s prevailing wage law,” including suspending the law temporarily, exempting school construction, or

defining “prevailing wage” as the average wage paid to all employees in all industries. See Paul Kersey, *The Effects of Michigan’s Prevailing Wage Law*, Mackinac Center for Public Policy, 2007, 19–20, <http://www.mackinac.org/8907>.

**108.** Text of Wisconsin’s budget bill, Act 32, is at <https://docs.legis.wisconsin.gov/2011/related/acts/32>. A good explanation of the changes in Wisconsin’s prevailing wage law is given by the Reinhart law firm; see Reinhart Boerner Van Deuren, “Changes to Prevailing Wage Laws Benefit Wisconsin Developers,” *Headlines in Real Estate Law E-Alert*, July 18, 2011, <http://www.reinhartlaw.com/Publications/Documents/ea%2020110718%20RE.pdf>. Another good summary is Curt Witynski, *2011-13 State Budget Makes Major Changes Affecting Municipalities*, League of Wisconsin Municipalities, July 5, 2011, <http://goo.gl/OZ4uJF>.

The previous legislature—in the 2009–2011 budget bill—lowered the prevailing wage threshold to \$25,000 total project cost (i.e., prevailing wages had to be paid on any project whose total value was \$25,000 or more), and also extended prevailing wage requirements to private construction projects if they were supported with at least \$1 million in public grants, loans, funding, or property transfers. The new bill raises the threshold: For projects where 85 percent of the work is done by a single trade, the threshold is \$48,000; multi-contractor projects have a \$100,000 threshold, except if done for a locality of fewer than 2,500 people, in which case the threshold is \$234,000. The bill also completely eliminates the applicability to private projects, even if supported with more than \$1 million in public funds. In addition, the bill specifically prohibits local units of government from enacting local prevailing wage requirements—not prospectively, but also retroactively undoing any currently existing ordinances—including in Milwaukee, which in 2009 passed a law requiring prevailing wages be paid on private projects supported by at least \$1 million in local public funding and further required that contracts be awarded to local Milwaukee contractors if their bid was within 5 percent of the lowest bid. Further, it makes several specific exemptions from prevailing wage, including all road, street, bridge, water, and sewer construction in areas where 90 percent of the lots contain two or fewer housing units. Finally, reporting requirements are also weakened: Contractors previously had to provide monthly certified payroll records; now they are not required to submit any reports, but a citizen can request from the state and the state can require from the contractor four weeks’ worth of certified payrolls, with individual names redacted. The state is not permitted to request more than one report, covering four weeks of work, for each quarter of the year. Note that the ABC also did not want any locality to be able to give preference to local contractors, a provision Milwaukee provided for.

**109.** For one estimate of the multiplier effect of higher construction wages, see Maria Figueroa and Jeff Grabelsky, *The Socio-Economic Impacts of Construction Unionization in Massachusetts*, Cornell University, School of Industrial and Labor Relations, March 2010.

**110.** The Bureau of Labor Statistics estimate of an 18.8 percent unionization rate for the construction industry as a whole (in the 32 states plus District of Columbia that have prevailing wage laws) is a low estimate, since it includes administrative and managerial employees employed by firms in this industry. The union share of actual construction workers is likely closer to 25 percent. Unionization rates vary both by geography and industry. The states that have state-level prevailing wage laws are likely to have higher unionization rates. On the other hand, the most highly unionized sector of the industry is heavy and highway construction, which is largely constructed with federal, rather than state, funds, and therefore would not be affected by changes in state law. Accounting for these cross-cutting effects, it appears roughly accurate to estimate that 50 percent of the work done on state prevailing wage projects—not including work covered under federal law—is performed by non-union contractors with non-union labor.

**111.** Calculations based on Current Population Survey data presented by Barry Hirsch and David MacPherson. See Union Membership and Coverage Database, various years, <http://unionstats.com/>.

- 112.** Paul Kersey, *The Effects of Michigan's Prevailing Wage Law*, Mackinac Center for Public Policy, 2007, <http://www.mackinac.org/8907>. In reality, the work is likely concentrated among a smaller number of employees, for whom the law's economic impact is even greater.
- 113.** David Denholm, "Virginia Prevailing Wage," *Jefferson Policy Journal*, May 27, 2011, <http://www.jeffersonpolicyjournal.com/?p=1461#printpreview>.
- 114.** American Legislative Exchange Council, *Professional Licensure and Certification Reform Act*, approved by the ALEC Board of Directors, June 2008, <http://www.alec.org/model-legislation/professional-licensure-and-certification-reform-act/>.
- 115.** American Legislative Exchange Council, *Economic Civil Rights Act*, 1995 Sourcebook of American State Legislation, reapproved January 2013, <http://www.alec.org/model-legislation/economic-civil-rights-act/>.
- 116.** Elizabeth Dickson, "Guest Worker Programs: Impact on the American Workforce and Immigration Policy," Statement of the U.S. Chamber of Commerce before the U.S. House of Representatives Committee on Education and the Workforce, July 19, 2006.
- 117.** This is what the minimum wage would have been in 2012. See John Schmitt, *Issue Brief: The Minimum Wage Is Too Damn Low*, Center for Economic and Policy Research, March 2012, <http://www.cepr.net/index.php/publications/reports/the-minimum-wage-is-too-damn-low>.
- 118.** Lawrence Mishel, Josh Bivens, Elise Gould, and Heidi Shierholz, *The State of Working America: 12th Edition*, an Economic Policy Institute book, Ithaca, N.Y.: Cornell University Press, p. 186.
- 119.** In 2012, it was estimated that a congressional proposal to raise the federal minimum wage from \$7.25 to \$9.80 in several steps between July 1, 2012, and July 1, 2014, would generate an additional \$40 billion over this two-year phase-in period. See Doug Hall and David Cooper, *How Raising the Federal Minimum Wage Would Help Working Families and Give the Economy a Boost*, Economic Policy Institute, Issue Brief #341, August 14, 2012, <http://www.epi.org/files/2012/ib341-raising-federal-minimum-wage.pdf>. An increase to \$10.52 would yield even greater annual benefits.
- 120.** For one example of conservative analysts suggesting that even low-wage workers are relatively well-off, see Robert Rector and Rachel Sheffield, "Air Conditioning, Cable TV, and an Xbox: What Is Poverty in the United States Today?" The Heritage Foundation, 2011, [http://thf\\_media.s3.amazonaws.com/2011/pdf/bg2575.pdf](http://thf_media.s3.amazonaws.com/2011/pdf/bg2575.pdf).
- 121.** John Schmitt and Marie-Eve Augier, *Issue Brief: Affording Health Care and Education on the Minimum Wage*, Center for Economic and Policy Research, March 2012, <http://www.cepr.net/index.php/blogs/cepr-blog/blog-post-health-and-education-on-the-minimum-wage>.
- 122.** Heidi Shierholz, *Lagging Minimum Wage Is One Reason Why Most Americans' Wages Have Fallen Behind Productivity*, July 11, 2013, Economic Policy Institute, <http://www.epi.org/publication/lagging-minimum-wage-reason-americans-wages/>.
- 123.** The best research on this question is a series of studies comparing employment in counties whose states increased their minimum wage with neighboring counties across state lines in states that did not increase their minimum wage; all found no impact on job growth. See David Card and Alan Krueger, "Minimum Wages and Employment: A Case Study of the Fast Food Industry in New Jersey and Pennsylvania," *American Economic Review*, vol. 84, no. 5 (1994): 772–93; Arindrajit Dube, William Lester, and Michael Reich, "Minimum Wage Effects Across State Borders: Estimating Using Contiguous Counties," Institute for Research on Labor and Employment Working Paper 157-07, University of California at Berkeley, 2010, <http://www.irl.berkeley.edu/workingpapers/157-07.pdf>; Sylvia Allegretto, Arindrajit Dube, and Michael Reich, "Do Minimum

- Wages Really Reduce Teen Employment? Accounting for Heterogeneity and Selectivity in State Panel Data,” *Industrial Relations*, vol. 50, no. 2 (2011), <http://www.irle.berkeley.edu/workingpapers/166-08.pdf>.
- 124.** National Employment Law Project, *Data Brief: Big Business, Corporate Profits, and the Minimum Wage*, July 2012, [http://www.jobsnowcoalition.org/reports/2012/big-business-minimum-wage\\_nelp2012.pdf](http://www.jobsnowcoalition.org/reports/2012/big-business-minimum-wage_nelp2012.pdf).
- 125.** National Employment Law Project, *Data Brief: Big Business, Corporate Profits, and the Minimum Wage*, July 2012, [http://www.jobsnowcoalition.org/reports/2012/big-business-minimum-wage\\_nelp2012.pdf](http://www.jobsnowcoalition.org/reports/2012/big-business-minimum-wage_nelp2012.pdf).
- 126.** Celinda Lake, Daniel Gotoff, and Matt Price, “The Economic Power of and Popular Support for Raising the Minimum Wage,” Memorandum to Interested Parties, Lake Research Partners, June 7, 2011.
- 127.** American Legislative Exchange Council, *Starting (Minimum) Wage Repeal Act*, 1996 Sourcebook of American State Legislation, [www.alecexposed.org](http://www.alecexposed.org).
- 128.** American Legislative Exchange Council, *Starting (Minimum) Wage Repeal Act*, 1996 Sourcebook of American State Legislation, [www.alecexposed.org](http://www.alecexposed.org).
- 129.** American Legislative Exchange Council, *Resolution in Opposition to any Increase in the Starting (Minimum) Wage*, 1996 Sourcebook of American State Legislation, [www.alecexposed.org](http://www.alecexposed.org); American Legislative Exchange Council, *Resolution Opposing Increases in Minimum Wage Linked to the CPI*, approved by the ALEC Board of Directors, September 11, 2008, [www.alecexposed.org](http://www.alecexposed.org).
- 130.** American Legislative Exchange Council, *Resolution Opposing Increases in Minimum Wage Linked to the CPI*, approved by the ALEC Board of Directors, September 11, 2008, [www.alecexposed.org](http://www.alecexposed.org).
- 131.** National Employment Law Project, *Delivering Economic Opportunity: Local Living Wage Ordinances and Coverage*, December 2010, [http://nelp.3cdn.net/0ddff028c738728d7fb\\_alm6iv582.pdf](http://nelp.3cdn.net/0ddff028c738728d7fb_alm6iv582.pdf).
- 132.** American Legislative Exchange Council, *Starting (Minimum) Wage Repeal Act*, 1996 Sourcebook of American State Legislation, [www.alecexposed.org](http://www.alecexposed.org).
- 133.** U.S. Chamber of Commerce spokesman Randy Johnson, quoted in Dave Boyer, “Democrats Debate Timing of Wage Bill,” *Washington Times*, May 6, 2002, <http://www.highbeam.com/doc/1G1-85928951.html>.
- 134.** U.S. Chamber of Commerce, “Issues: Minimum Wage,” <http://www.uschamber.com/issues/labor/minimum-wage>.
- 135.** U.S. Chamber of Commerce, *The Impact of State Employment Policies on Job Growth: A 50-State Review*, 2011.
- 136.** U.S. Chamber of Commerce, *The Impact of State Employment Policies on Job Growth: A 50-State Review*, 2011.
- 137.** Text of the bill is available at <http://votesmart.org/static/billtext/35424.pdf>. For a record of the override, see LegiScan, “NH HB 133, 2011, Regular Session,” <http://legiscan.com/gaits/view/225846>.
- 138.** Quoted in Michael McCord, “N.H. Fights Over Minimum Wage,” *Seacoast Online*, June 20, 2011, <http://www.seacoastonline.com/articles/20110620-BIZ-106200329>. In 2012, O’Brien issued a public statement saying that the “special interest intimidation campaign” against ALEC had prompted him to become a member. See Bill O’Brien, letter to the editor, *The Forum*, April 21, 2012, <http://forumhome.org/speaker-obrien-alec-smart-p16773-78.htm>.

- 139.** Text of the bill is available at <http://legis.state.sd.us/sessions/2011/Bills/HB1148ENR.pdf>. The bill's primary sponsors were Rep. Mike Verchio and Sen. Shantel Krebs. Krebs is former House majority whip. For the Restaurant Association's advocacy for the bill, see South Dakota Restaurant Association, "Minimum Wage Exemption for Seasonal Amusement Businesses," *Legislative Bulletin*, no. 3, February 9, 2011.
- 140.** Text of the bill, LD 1729, is available at [http://www.mainelegislature.org/legis/bills/bills\\_125th/chapdocs/PUBLIC483.rtf](http://www.mainelegislature.org/legis/bills/bills_125th/chapdocs/PUBLIC483.rtf).
- 141.** Text of the bill is available at <http://legiscan.com/gaits/view/232193>. The Indiana Chamber of Commerce was a vocal supporter of this bill, as well as one of the largest donors to Rep. Mike Speedy, the bill's prime sponsor. See National Institute on Money in State Politics, *Follow the Money* database, <http://www.followthemoney.org/database/uniquecandidate.phtml?uc=140295>; Inside Indiana Business, "Chamber Hopes Several Bills Get Back on Track," March 29, 2011, <http://www.insideindianabusiness.com/newsitem.asp?ID=46882#middle>. Text of Florida's 2003 ban is available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0655z.LFAC.DOCX&DocumentType=Analysis&BillNumber=0655&Session=2013>.
- 142.** Text of Mississippi's HB 141 is available at <http://legiscan.com/MS/research/HB141/2013>. See also Josh Israel, "Mississippi Republicans Would Prohibit Towns from Establishing a Minimum Wage," *Think Progress*, February 27, 2013, <http://thinkprogress.org/economy/2013/02/27/1644821/mississippi-republicans-would-prohibit-towns-from-establishing-a-minimum-wage>.
- 143.** SJR 2 was introduced by Sen. Joseph Hardy, a member of ALEC's Health and Human Services Task Force. See American Legislative Exchange Council, "HHS Task Force," committee roster, June 29, 2011, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/35-day\\_mailing\\_hhs%20New%20Orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/35-day_mailing_hhs%20New%20Orleans.pdf). Statements supporting the bill by the Reno and Las Vegas Chambers, as well as the Retail Association, can be found in "Minutes of the Senate Committee on Commerce, Labor and Energy," Seventy-sixth Session, February 16, 2011.
- 144.** See Dave Jamieson, "Minimum Wage, Labor Investigations Target of Missouri Republicans," *Huffington Post*, April 28, 2011, [http://www.huffingtonpost.com/2011/04/28/missouri-republicans-minimum-wage\\_n\\_855117.html](http://www.huffingtonpost.com/2011/04/28/missouri-republicans-minimum-wage_n_855117.html).
- 145.** The text of HCR 2056 is available at <http://www.azleg.gov/legtext/50leg/2r/bills/hcr2056s.htm>. On the political failure of this effort, see Howard Fischer, "Proposal to Kill Arizona Minimum Wage Pulled," *East Valley Tribune*, March 23, 2012, [http://www.eastvalleytribune.com/money/article\\_c097d6f8-72e6-11e1-a22c-001871e3ce6c.html](http://www.eastvalleytribune.com/money/article_c097d6f8-72e6-11e1-a22c-001871e3ce6c.html).
- 146.** Sylvia Allegretto and Kai Filion, *Waiting for Change: The \$2.13 Federal Subminimum Wage*, Economic Policy Institute, Briefing Paper #207, February 23, 2011, [http://www.epi.org/publication/waiting\\_for\\_change\\_the\\_213\\_federal\\_subminimum\\_wage/](http://www.epi.org/publication/waiting_for_change_the_213_federal_subminimum_wage/).
- 147.** Sylvia Allegretto and Kai Filion, *Waiting for Change: The \$2.13 Federal Subminimum Wage*, Economic Policy Institute, Briefing Paper #207, February 23, 2011, [http://www.epi.org/publication/waiting\\_for\\_change\\_the\\_213\\_federal\\_subminimum\\_wage/](http://www.epi.org/publication/waiting_for_change_the_213_federal_subminimum_wage/).
- 148.** Maine's statute, for instance, provides that "upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference." See [http://www.mainelegislature.org/legis/bills/bills\\_125th/chapters/PUBLIC118.asp](http://www.mainelegislature.org/legis/bills/bills_125th/chapters/PUBLIC118.asp).
- 149.** On the impracticality of enforcing the tipped minimum-wage laws, see Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Heckathorn, Mirabai Auer, James DeFilippis, Ana Luz González, Victor Narro, Jason Perelshteyn, Diana Polson, and

Michael Spiller, *Broken Laws, Unprotected Workers: Violation of Employment and Labor Laws in America's Cities*, National Employment Law Project, 2009, <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.

- 150.** Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Heckathorn, Mirabai Auer, James DeFilippis, Ana Luz González, Victor Narro, Jason PerelshTEYN, Diana Polson, and Michael Spiller, *Broken Laws, Unprotected Workers: Violation of Employment and Labor Laws in America's Cities*, National Employment Law Project, 2009, <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.
- 151.** On Florida's superior performance, see National Employment Law Project, *Florida Senate Bill 2106: Slashing Minimum Wage for Florida's Tipped Workers Is Bad Policy and Unconstitutional; Suggestions That Florida's Tipped Wage Is Hurting Businesses Are Unfounded*, February 2012. On projections of record sales for 2012, see National Restaurant Association, "Restaurant Industry Set to Outpace National Job Growth, Reach Record Sales in 2012," February 1, 2012, <http://www.multivu.com/mnr/52982-national-restaurant-association-2012-restaurant-industry-forecast>. For more on the Florida effort, see National Employment Law Project, *Florida Senate Bill 2106: Slashing Minimum Wage for Florida's Tipped Workers Is Bad Policy and Unconstitutional; Suggestions That Florida's Tipped Wage Is Hurting Businesses Are Unfounded*, February 2012.
- 152.** Ballotpedia, "Arizona Minimum Wage, Proposition 202 (2006)," [http://ballotpedia.org/wiki/index.php/Arizona\\_Minimum\\_Wage,\\_Proposition\\_202\\_\(2006\)#cite\\_note-0](http://ballotpedia.org/wiki/index.php/Arizona_Minimum_Wage,_Proposition_202_(2006)#cite_note-0); Dale Quinn, "Arizonans OK a 31% raise to \$6.75 an hour starting Jan. 1," *Arizona Daily Star*, November 8, 2006.
- 153.** HCR 2056 was introduced by Rep. Steve Court, and amended in the House Commerce Committee by Javan Mesnard. The amended language can be found at [http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/50leg/2r/adopted/h.hcr2056-com.doc.htm&Session\\_ID=107](http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/50leg/2r/adopted/h.hcr2056-com.doc.htm&Session_ID=107). Both Mesnard and Court were ALEC members, with Court serving on ALEC's Education Task Force. See People for the American Way and Common Cause, *ALEC in Arizona: The Voice of Corporate Special Interests in the Halls of Arizona's Legislature*, 5, <http://www.pfaw.org/media-center/publications/alec-arizona-voice-corporate-special-interests-halls-arizonas-legislature>. Court's bill initially sought to cut the regular minimum wage as well, but he subsequently withdrew that version of the bill.
- 154.** Howard Fisher, "Proposal to Repeal Minimum Wage Pulled," *Arizona Daily Sun*, March 21, 2012, [http://azdailysun.com/news/local/state-and-regional/proposal-to-repeal-minimum-wage-pulled/article\\_e0509178-d778-5e73-8aec-97ea48b32d08.html](http://azdailysun.com/news/local/state-and-regional/proposal-to-repeal-minimum-wage-pulled/article_e0509178-d778-5e73-8aec-97ea48b32d08.html).
- 155.** National Employment Law Project, *Florida Senate Bill 2106: Slashing Minimum Wage for Florida's Tipped Workers Is Bad Policy and Unconstitutional; Suggestions That Florida's Tipped Wage Is Hurting Businesses Are Unfounded*, February 2012. SB 2016 specifies that an employer can elect to pay tipped employees the federal tipped minimum wage of \$2.13 rather than the Florida tipped minimum wage of \$4.65, if he guarantees that, including tips, they will receive an hourly wage at least 130 percent of the full minimum wage. Florida's state minimum wage is currently \$7.67; 130 percent of this rate would be \$9.97. Thus, tipped employees would be guaranteed a wage of almost \$10 per hour, and an employer would have to commit in writing to pay this, with the commitment renewable every year. But if any employee received this amount, it would be because they had received a volume of tips that put them over the \$9.97 threshold, and this law would effectively permit their employers to take \$2.52 of their tip money. If the guaranteed arrangement—which had no enforcement mechanism—did not please an employer, it could be terminated after one year. The mechanics of how SB 2016 would work are spelled out in Florida Senate, Commerce and Tourism Committee, *Committee Meeting Expanded Agenda*, February 7, 2012, [http://www.flsenate.gov/PublishedContent/Committees/2010-2012/CM/MeetingRecords/MeetingPacket\\_1778.pdf](http://www.flsenate.gov/PublishedContent/Committees/2010-2012/CM/MeetingRecords/MeetingPacket_1778.pdf).
- 156.** National Employment Law Project, *Florida Senate Bill 2106: Slashing Minimum Wage for Florida's Tipped Workers Is Bad Policy and Unconstitutional; Suggestions That Florida's Tipped Wage Is Hurting Businesses Are Unfounded*, February 2012.

157. Quoted in Sandra Pedicini, “Senate Bill Could Cut Hourly Wages of Servers, Bartenders,” *Orlando Sentinel*, February 7, 2012, [http://articles.orlandosentinel.com/2012-02-07/business/os-minimum-wage-servers-20120207\\_1\\_minimum-wage-senate-bill-florida-senate-committee](http://articles.orlandosentinel.com/2012-02-07/business/os-minimum-wage-servers-20120207_1_minimum-wage-senate-bill-florida-senate-committee).
158. Florida Senate, Commerce and Tourism Committee, *Committee Meeting Expanded Agenda*, February 7, 2012, [http://www.flsenate.gov/PublishedContent/Committees/2010-2012/CM/MeetingRecords/MeetingPacket\\_1778.pdf](http://www.flsenate.gov/PublishedContent/Committees/2010-2012/CM/MeetingRecords/MeetingPacket_1778.pdf).
159. HB 131 did not become law. On supporters, see Wyoming Lodging and Restaurant Association, “Wyoming Lodging & Restaurant Association (WLRA) Positions,” <http://www.wlra.org/displaycommon.cfm?an=1&subarticlenbr=87>. Co-sponsors Reps. Tim Stubson and Dan Zwonitzer and Sen. Henry Coe are all ALEC task force members. See American Legislative Exchange Council, “Public Safety & Elections Task Force,” committee roster, June 29, 2011, 15, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/pse\\_35-day\\_mailing\\_2011\\_annual\\_meeting%20new%20orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/pse_35-day_mailing_2011_annual_meeting%20new%20orleans.pdf); American Legislative Exchange Council, “Telecommunications & Information Technology Task Force,” committee roster, July 28, 2011, 16, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/telecom&it\\_updated\\_35-day\\_mailing%20New%20Orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/telecom&it_updated_35-day_mailing%20New%20Orleans.pdf); American Legislative Exchange Council, “Education,” committee roster, July 1, 2011, 3, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/education\\_35-day\\_mailing%20-%20new%20orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/education_35-day_mailing%20-%20new%20orleans.pdf).
160. For the legal definition of bussers as tipped employees, see U.S. Department of Labor, Wage and Hour Division, “Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA),” March 2011, <http://www.dol.gov/whd/regs/compliance/whdfs15.htm>.
161. Text of SB 57 is available at [http://www.mainelegislature.org/legis/bills/bills\\_125th/chapters/PUBLIC118.asp](http://www.mainelegislature.org/legis/bills/bills_125th/chapters/PUBLIC118.asp).
162. The law stipulates that an “employer in a banquet or private club setting may use some or all of any service charge to meet its obligation to compensate all employees” (bill language is at [http://www.mainelegislature.org/legis/bills/bills\\_125th/chapters/PUBLIC118.asp](http://www.mainelegislature.org/legis/bills/bills_125th/chapters/PUBLIC118.asp)). SB 57 was sponsored by ALEC Education Task Force member Brian Langley, who stated it came with the support of the Maine Restaurant Association. See American Legislative Exchange Council, “Education,” committee roster, July 1, 2011, 10, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/education\\_35-day\\_mailing%20-%20new%20orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/education_35-day_mailing%20-%20new%20orleans.pdf); Steve Mistler, “Who Should Control the Tips?” *Bangor Daily News*, February 5, 2011, <http://bangordailynews.com/2011/02/05/business/who-should-control-the-tips/>.
163. The text of Montana HB 577 is available at <http://data.opi.mt.gov/bills/2011/billpdf/HB0577.pdf>. HB 577 is titled “An Act Eliminating Tips and Gratuities from the Definition of ‘Wages’ Under Workers’ Compensation Law In Order to Reduce Employer Contributions to the Workers’ Compensation Program; and Amending Sections 33-22-3006 and 39-71-123, MCA.” The bill simply changed the definition of “wages” to delete the inclusion of “tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes.” See States News Service, “Governor Schweitzer Vetoes Bills Today May 10, 2011,” May 10, 2011; Project Vote Smart, “HB 577 – Relating to Service Industry Wages – Key Vote,” <http://votesmart.org/bill/13305/35006/40832/relating-to-service-industry-wages#.UQgoZegsXbA>. When the bill passed both houses, and before the governor’s veto, the Restaurant Association exhorted its members to action in support of its signing: “This is historic news indeed! It is the first time in my 18 years that we have successfully passed a bill that provides relief to operators with tipped employees. This has not been for a lack of effort over the years—in fact, we have tried almost every session to get something done relating to tips, with varying levels of success. My point is—this is *huge* news and we need to get the bill over the goal line.” See Montana Restaurant Association, *Legislative Reports*, April 14, 2011, <http://www.mtrestaurant.com/displaycommon.cfm?an=1&subarticlenbr=37>. For the Chamber’s support, see Montana Chamber of Commerce, *2011 Voting Review: 62<sup>nd</sup> Montana Legislature and Governor*, 2012, [http://www.montanachamber.com/files/2011\\_Voting\\_Review.pdf](http://www.montanachamber.com/files/2011_Voting_Review.pdf).



- 164.** HB 334 is explained in UNITE HERE Local 427, “Legislative Alert,” April 11, 2011, <http://www.unitehere427.org/?p=189>. The connection with HB 334 was also highlighted in Gov. Brian Schweitzer’s rationale for vetoing HB 577: “One of the provisions in HB 334 that I did not fully support eliminated permanent partial benefits for many Montana workers with minor injuries. In light of that major change to our workers’ compensation system, I cannot support HB 577 because it would lower benefits for even more injured workers. The bill would place most tipped employees in the position of being considered minimum wage workers for purposes of determining their eligibility for permanent partial benefits.” See Office of the Governor, Letter to Secretary of State Linda McCulloch Conveying the Governor’s Veto of House Bill 577, May 10, 2011, [http://governor.mt.gov/news/docs/051011-HB%20577%20-%20VETO%20-%20tips%20-%20workers%20comp%20-%20051011%20\(2\).pdf](http://governor.mt.gov/news/docs/051011-HB%20577%20-%20VETO%20-%20tips%20-%20workers%20comp%20-%20051011%20(2).pdf). In other words, waiters, waitresses, bartenders, and others would now be ineligible for those benefits, because the law would assume that any job at all would pay at least as much as their old job, though this is not necessarily true when taking tips into account.
- 165.** Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Heckathorn, Mirabai Auer, James DeFilippis, Ana Luz González, Victor Narro, Jason Perelshteyn, Diana Polson, and Michael Spiller. *Broken Laws, Unprotected Workers: Violation of Employment and Labor Laws in America’s Cities*, National Employment Law Project, 2009, <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>. Low-wage workers are defined as non-managerial employees in industries where the median non-managerial wage is 85 percent or less of the median non-managerial wage for all employees in the city of employment.
- 166.** Looking at the most recent years reported shows that in 2008, the U.S. Department of Labor recovered \$185 million in back wages that had been illegally withheld by employers. By comparison, the total value of all bank, gas station, and convenience store robberies in the country was just under \$57 million in 2009. See U.S. Department of Labor, *Wage and Hour Division: 2008 Statistics Fact Sheet*, December 2008, <http://www.dol.gov/whd/statistics/2008FiscalYear.htm>; U.S. Bureau of the Census, *Statistical Abstract of the United States: 2012*, “Table 321, Robbery and Property Crimes by Type and Average Value Lost: 1990 to 2009,” <http://www.census.gov/compendia/statab/2012/tables/12s0321.pdf>.
- 167.** Kim Bobo, “Is the Department of Labor Effectively Enforcing Our Wage and Hour Laws?” Testimony before the Committee on Education and Labor, U.S. House of Representatives, July 15, 2008, <http://web.archive.org/web/20091022041853/http://www.iwj.org/template/page.cfm?id=124>.
- 168.** National Employment Law Project, *Florida Senate Bill 2106: Slashing Minimum Wage for Florida’s Tipped Workers Is Bad Policy and Unconstitutional; Suggestions That Florida’s Tipped Wage Is Hurting Businesses Are Unfounded*, February 2012.
- 169.** Jacob Meyer and Robert Greenleaf, *Enforcement of State Wage and Hour Laws: A Survey of State Regulators*, Columbia Law School, National State Attorneys General Program, April 2011, 22, <http://web.law.columbia.edu/attorneys-general/policy-areas/labor-project/resources/state-and-hour-laws>.
- 170.** Policy Matters Ohio, *Shrinking Employment Law Enforcement Funding Raises Risk of Wage Theft*, May 26, 2011, [http://www.policymattersohio.org/wp-content/uploads/2011/10/ShrinkingEmploymentWageTheftPR2011\\_05.pdf](http://www.policymattersohio.org/wp-content/uploads/2011/10/ShrinkingEmploymentWageTheftPR2011_05.pdf).
- 171.** Dave Jamieson, “Minimum Wage, Labor Investigations Target of Missouri Republicans,” *Huffington Post*, April 28, 2011, [http://www.huffingtonpost.com/2011/04/28/missouri-republicans-minimum-wage\\_n\\_855117.html](http://www.huffingtonpost.com/2011/04/28/missouri-republicans-minimum-wage_n_855117.html).
- 172.** Dave Jamieson, “Minimum Wage, Labor Investigations Target of Missouri Republicans,” *Huffington Post*, April 28, 2011, [http://www.huffingtonpost.com/2011/04/28/missouri-republicans-minimum-wage\\_n\\_855117.html](http://www.huffingtonpost.com/2011/04/28/missouri-republicans-minimum-wage_n_855117.html).
- 173.** Rudi Keller and Janise Silver, “State Wage Inquiries at Risk,” *Columbia Daily Tribune*, April 3, 2011, <http://www.columbiatribune.com/news/2011/apr/03/state-wage-inquiries-at-risk>.

- 174.** Missouri General Assembly, *Truly Agreed and Finally Passed (After Veto)*, Department of Labor and Industrial Relations, House Bill 7, 96<sup>th</sup> General Assembly, First Regular Session, Fiscal Year 2012.
- 175.** U.S. Department of Labor, *Performance and Accountability Report*, 2009, [http://www.dol.gov/\\_sec/media/reports/annual2009/2009annualreport.pdf](http://www.dol.gov/_sec/media/reports/annual2009/2009annualreport.pdf).
- 176.** Tim Judson and Cristina Francisco-McGuire, *Where Theft Is Legal: Mapping Wage Theft Laws in the 50 States*, Progressive States Network, June 2012, <http://www.progressivestates.org/pubs/reports/where-theft-legal-mapping-wage-theft-laws-in-the-50-states>. The provision of damages rather than merely “make whole” remedies is critical, because many low-wage workers are already in economically precarious situations, and lost wages or termination in response to filing a complaint can often lead to financially calamitous events such as eviction, utility shut-off, or vehicle repossession. Laws that allow only for recovery of lost wages fail to recognize these dramatic financial costs that wage theft imposes on employees.
- 177.** Cynthia Hernandez and Carol Stepick, *Wage Theft: An Economic Drain on Florida*, Florida International University, Research Institute on Social and Economic Policy and Center for Labor Research and Studies, 2012, [http://www.risep-fiu.org/wp-content/uploads/2012/01/Wage-Theft\\_How-Millions-of-Dollars-are-Stolen-from-Floridas-Workforce\\_final.docx1.pdf](http://www.risep-fiu.org/wp-content/uploads/2012/01/Wage-Theft_How-Millions-of-Dollars-are-Stolen-from-Floridas-Workforce_final.docx1.pdf).
- 178.** For more information on Chapter 202-194, the Florida law abolishing the state’s Department of Labor, see Florida Senate, *Interim Report 2011-107*, October 2010, <http://www.flsenate.gov/Committees/InterimReports/2011/2011-107cm.pdf>.
- 179.** Reported in Andy Reid, “Religious Group: Palm Beach County’s Wage Theft Fight Falls Short: Business Leaders Fighting Push for Local Wage-Theft Law,” *Sun Sentinel*, November 10, 2011, [http://articles.sun-sentinel.com/2011-11-10/news/fl-stealing-wages-palm-20111110\\_1\\_wage-theft-religious-group-legal-system](http://articles.sun-sentinel.com/2011-11-10/news/fl-stealing-wages-palm-20111110_1_wage-theft-religious-group-legal-system).
- 180.** Tim Judson and Cristina Francisco-McGuire, *Cracking Down on Wage Theft: State Strategies for Protecting Workers and Recovering Revenues*, Progressive States Network, April 2012, <http://www.progressivestates.org/sync/pdfs/PSN.CrackingDownonWageTheft.pdf>.
- 181.** Marc Restrepo, “Miami Judge Rules in Favor of County’s Wage-Theft Program,” *Florida Independent*, March 27, 2012, <http://floridaindependent.com/73618/miami-dade-county-wage-theft>.
- 182.** Reported in Andy Reid, “Religious Group: Palm Beach County’s Wage Theft Fight Falls Short: Business Leaders Fighting Push for Local Wage-Theft Law,” *Sun Sentinel*, November 10, 2011, [http://articles.sun-sentinel.com/2011-11-10/news/fl-stealing-wages-palm-20111110\\_1\\_wage-theft-religious-group-legal-system](http://articles.sun-sentinel.com/2011-11-10/news/fl-stealing-wages-palm-20111110_1_wage-theft-religious-group-legal-system).
- 183.** Andrew Marra, “Continue Palm Beach County’s Policy on Wage Theft,” *Palm Beach Post*, December 3, 2012, <http://www.palmbeachpost.com/news/news/opinion/editorial-continue-palm-beach-countys-policy-on-wa/nTKSH/>.
- 184.** Reported in Andy Reid, “Religious Group: Palm Beach County’s Wage Theft Fight Falls Short: Business Leaders Fighting Push for Local Wage-Theft Law,” *Sun Sentinel*, November 10, 2011, [http://articles.sun-sentinel.com/2011-11-10/news/fl-stealing-wages-palm-20111110\\_1\\_wage-theft-religious-group-legal-system](http://articles.sun-sentinel.com/2011-11-10/news/fl-stealing-wages-palm-20111110_1_wage-theft-religious-group-legal-system).
- 185.** Andy Reid, “Palm Beach County Scraps Wage-Theft Ordinance,” *Sun Sentinel*, December 4, 2012, [http://articles.sun-sentinel.com/2012-12-04/news/fl-wage-theft-showdown-palm-20121204\\_1\\_wage-theft-law-wage-theft-hal-valeche](http://articles.sun-sentinel.com/2012-12-04/news/fl-wage-theft-showdown-palm-20121204_1_wage-theft-law-wage-theft-hal-valeche).
- 186.** Text of bill is available at <http://www.flsenate.gov/Session/Bill/2012/0862/BillText/Filed/HTML>. On support of business lobbies, see Sunshine Slate, “Wage Theft Bill Passes House Judiciary Despite Objections,” February 24, 2012, <http://www.sunshineslate.com/tag/hb-609>.

- 187.** Florida House of Representatives, *CS/CS/CS/HB 1125 Employers and Employees: Referred Committees and Committee Actions*, <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=50432>; Toluse Olorunnipa, “Fla. House Passes ‘Wage Theft’ Bill 71-45,” *Tampa Bay Times*, April 25, 2013; Florida Retail Federation, “Florida Retailers Name Rep. Goodson as 2013 Representative of the Year,” June 25, 2013, <https://www.frf.org/index.php/app-recent-news/32-press/743-florida-retailers-name-rep-goodson-as-2013-representative-of-the-year>.
- 188.** American Legislative Exchange Council, *Economic Civil Rights Act*, 1995 Sourcebook of American State Legislation, [www.alecexposed.org](http://www.alecexposed.org).
- 189.** Quoted in ABC News, *Full Transcript: ABC News Iowa Republican Debate*, December 11, 2011, <http://abcnews.go.com/Politics/full-transcript-abc-news-iowa-republican-debate/story?id=15134849&singlePage=true#.UNvPRrSmDwx>.
- 190.** Quoted in Ty Brennan, “Lunchroom Controversy Spurs Change in Idaho Law,” KTVB.com, April 7, 2011, <http://www.ktvb.com/NEWS/LOCAL/LUNCHROOM-%20CONTROVERSY-SPURS-CHANGE-IN-IDAHO-LAW-119366994.html>. The statute came about because there had been a program in Meridian where middle and high school kids were employed by their school to work in the lunchroom. The state blocked the program, noting it was illegal for kids under 14 to work during school hours. Local parents and school officials protested that they wanted to keep the program, and began lobbying to change the law.
- 191.** These changes were made as part of the state’s budget bill, Act 32. New child labor policies are described in Jessica Van Egeren, “GOP Set to Roll Back Child Labor Laws,” *Capital Times*, June 15, 2011. On negative impacts of working during the school year, see Child Labor Coalition, *NCL: Eroding Child Labor Protections in 2012 Will Put Some Teens at Risk in US*, <http://stopchildlabor.org/?p=2746>.
- 192.** Wisconsin Grocery Association lobbyist Michelle Kussow, quoted in Holly Rosenkrantz, “Taking Aim at Child Labor Laws,” *BloombergBusinessWeek*, January 5, 2012, <http://www.businessweek.com/magazine/taking-aim-at-child-labor-laws-01052012.html>.
- 193.** Quoted in Michelle Chen, “States Attempt to Instill ‘Work Ethic’ by Rolling Back Child Labor Protections,” *The Nation*, January 10, 2012.
- 194.** On discomfort with this bill, see Bill Nemitz, “GOP Bills Exploit Kids in Workplace,” *Portland Press Herald*, March 30, 2011, <http://www.pressherald.com/news/118882869.html>.
- 195.** Text of the bill is available at <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0149&item=9&snm=125>. On support of the Restaurant Association, see Steve Mistler, “Bill to Loosen Child Labor Restrictions Heads to Maine Senate,” *Bangor Daily News*, March 29, 2011, <http://bangordailynews.com/2011/03/29/politics/bill-to-loosen-child-labor-restrictions-heads-to-maine-senate/>.
- 196.** Rep. Bruce Bickford, quoted in Amanda Terkel, “Maine GOP Legislators Looking to Loosen Child Labor Laws,” *Huffington Post*, March 30, 2011, [http://www.huffingtonpost.com/2011/03/30/maine-gop-legislators-loo\\_n\\_842563.html](http://www.huffingtonpost.com/2011/03/30/maine-gop-legislators-loo_n_842563.html).
- 197.** Rep. Bruce Bickford, quoted in Amanda Terkel, “Maine GOP Legislators Looking to Loosen Child Labor Laws,” *Huffington Post*, March 30, 2011, [http://www.huffingtonpost.com/2011/03/30/maine-gop-legislators-loo\\_n\\_842563.html](http://www.huffingtonpost.com/2011/03/30/maine-gop-legislators-loo_n_842563.html).
- 198.** The text of the bill, showing both old and new language, is available at <http://www.legislature.mi.gov/documents/2011-2012/billintroduced/House/pdf/2011-HIB-4732.pdf>. Under the old law, when school is in session, enrolled students were limited to “a combined school and work week of 48 hours during the period school is in session.” The new law removes that limit and just says kids cannot work more than 24 hours per week while school is in session. The Michigan Department of Education

mandates a minimum of 1,098 class hours per student per year, and beginning in 2012–2013 a minimum of 170 days (see Michigan Department of Education, *Pupil Accounting Manual*, [http://mi.gov/documents/mde/Section-2\\_250846\\_7.pdf](http://mi.gov/documents/mde/Section-2_250846_7.pdf)). That comes to an average of 6.45 hours per day. Assuming a five-day school week, that's 32.2 hours of school, which under the old law would leave 15.7 hours of work. In other words, the new law lets students work nine more hours per week, and increases the school-plus-work week from 48 to 57 hours.

- 199.** Michigan House of Representatives Standing Committee on Commerce, “The Minutes of the House Standing Committee on Commerce,” June 21, 2011, <http://www.house.mi.gov/SessionDocs/2011-2012/Minutes/COMM062111.pdf>.
- 200.** Andy Deloney, “Statement of the Michigan Restaurant Association in Support of House Bill 4732,” House Commerce Committee, June 21, 2011, <http://house.michigan.gov/SessionDocs/2011-2012/Testimony/Committee4-6-21-2011-4.pdf>. At the time this statement was made, Michigan’s unemployment rate was 10.6 percent, with 495,000 people officially unemployed. Furthermore, there was no evidence of a boom in restaurant work—from June 2011 to June 2012, employment in Leisure and Hospitality Services increased by only 4,000 statewide, while the retail trade sector lost 8,000 jobs. See Michigan Department of Technology, Management and Budget, “Michigan’s June Unemployment Rate Increases Slightly,” July 18, 2012, [http://www.michigan.gov/documents/dtmb/LMI-JulyRelease\\_392680\\_7.pdf](http://www.michigan.gov/documents/dtmb/LMI-JulyRelease_392680_7.pdf).
- 201.** Child Labor Coalition, *NCL: Eroding Child Labor Protections in 2012 Will Put Some Teens at Risk in US*, <http://stopchildlabor.org/?p=2746>. The official state legislative summary of Missouri’s SB 222 explains, “This act modifies the child labor laws. It eliminates the prohibition on employment of children under age fourteen. Restrictions on the number of hours and restrictions on when a child may work during the day are also removed. It also repeals the requirement that a child ages fourteen or fifteen obtain a work certificate or work permit in order to be employed. Children under sixteen will also be allowed to work in any capacity in a motel, resort or hotel where sleeping accommodations are furnished. It also removes the authority of the director of the Division of Labor Standards to inspect employers who employ children and to require them to keep certain records for children they employ. It also repeals the presumption that the presence of a child in a workplace is evidence of employment.” See text of Missouri’s SB 222, available at [http://www.senate.mo.gov/11info/BTS\\_Web/Bill.aspx?SessionType=R&BillID=4124271](http://www.senate.mo.gov/11info/BTS_Web/Bill.aspx?SessionType=R&BillID=4124271).
- 202.** Immigration Works USA, *The Economic Impact of H-2B Workers*, U.S. Chamber of Commerce, Labor, Immigration & Employee Benefits Division, October 28, 2010, <http://www.uschamber.com/reports/economic-impact-h-2b-workers>.
- 203.** Text of LD 1685 is at <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1237&item=5&snum=125>. Maine law had previously required that drivers and helpers paid on a non-hourly basis be paid the “reasonable equivalent” of overtime; this requirement was removed by the new statute. See Pierce Atwood LLP, “2012 Summary of New Maine Laws,” June 1, 2012, 8, [http://www.pierceatwood.com/webfiles/2012SummaryofNewMaineLaws\\_FinalIssue.pdf](http://www.pierceatwood.com/webfiles/2012SummaryofNewMaineLaws_FinalIssue.pdf). LD 1685 was designated one of the year’s “important bills” by the National Federation of Independent Business. See National Federation of Independent Business, “New Laws Affect Wide Range of Business Activity,” <http://www.nfib.com/nfib-in-my-state/nfib-in-my-state-content?cmsid=60000>.
- 204.** On Rep. O’Connor’s position on the minimum wage, see Beth O’Connor, “Be Patient: Republicans Are Turning Maine Around,” *Bangor Daily News*, August 5, 2011, <http://bangordailynews.com/2011/08/05/opinion/contributors/be-patient-republicans-are-turning-maine-around/>.
- 205.** Text of the bill is available at <http://legiscan.com/gaits/text/203918>. For the Chamber’s statement of support, see Ohio Chamber of Commerce, “Bill Tracking: Compensatory Time,” <http://www.ohiochamber.com/mx/hm.asp?id=home&t=emz/emzbills2&p1=2338>.

- 206.** Center for Media and Democracy, “Ohio ALEC Politicians,” [http://www.sourcewatch.org/index.php/Ohio\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Ohio_ALEC_Politicians); 129th General Assembly for the State of Ohio, “Unofficial Votes for House Bill 61,” [http://www.legislature.state.oh.us/votes.cfm?ID=129\\_HB\\_61](http://www.legislature.state.oh.us/votes.cfm?ID=129_HB_61).
- 207.** Text of the bill is available at [http://www.legislature.state.oh.us/BillText129/129\\_HB\\_61\\_RH\\_Y.pdf](http://www.legislature.state.oh.us/BillText129/129_HB_61_RH_Y.pdf).
- 208.** Text of the bill is available at [http://www.legislature.state.oh.us/BillText129/129\\_HB\\_61\\_RH\\_Y.pdf](http://www.legislature.state.oh.us/BillText129/129_HB_61_RH_Y.pdf).
- 209.** Text of Nevada Senate Bill 332, 2011, is available at <http://www.leg.state.nv.us/Session/76th2011/Bills/SB/SB332.pdf>.
- 210.** SB 332 was introduced by Sen. James Settelmeyer, an ALEC Commerce, Insurance and Economic Development Task Force Member. See American Legislative Exchange Council, “Commerce, Insurance, & Economic Development Task Force,” committee roster, June 29, 2011, 20, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/cied\\_35-day\\_mailing\\_2011\\_annual\\_meeting%20New%20Orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/cied_35-day_mailing_2011_annual_meeting%20New%20Orleans.pdf). Co-sponsors include Sen. Barbara Cegavske, ALEC’s Nevada state chairman and a member of ALEC’s Education Task Force (American Legislative Exchange Council, “State Chairmen,” <http://www.alec.org/about-alec/state-chairmen/>; American Legislative Exchange Council, “Education,” committee roster, July 1, 2011, 3, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/education\\_35-day\\_mailing%20-%20new%20orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/education_35-day_mailing%20-%20new%20orleans.pdf)); Sen. Joseph Hardy, a member of ALEC’s Health and Human Services Task Force (American Legislative Exchange Council, “HHS Task Force,” committee roster, June 29, 2011, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/35-day\\_mailing\\_hhs%20New%20Orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/35-day_mailing_hhs%20New%20Orleans.pdf)); and Sen. Don Gustavson, a member of ALEC’s Public Safety & Elections Task Force (American Legislative Exchange Council, “Public Safety & Elections Task Force,” committee roster, June 29, 2011, 5, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/pse\\_35-day\\_mailing\\_2011\\_annual\\_meeting%20new%20orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/pse_35-day_mailing_2011_annual_meeting%20new%20orleans.pdf)).
- 211.** Senate Committee on Commerce, Labor and Energy, “Minutes of the Senate Committee on Commerce, Labor and Energy,” March 28, 2011.
- 212.** All data reported in Sarah Leberstein, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, National Employment Law Project, October 2011.
- 213.** All data reported in Sarah Leberstein, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, National Employment Law Project, October 2011.
- 214.** Tim Judson and Cristina Francisco-McGuire, *Where Theft Is Legal: Mapping Wage Theft Laws in the 50 States*, Progressive States Network, June 2012, 17–20, <http://www.progressivestates.org/pubs/reports/where-theft-legal-mapping-wage-theft-laws-in-the-50-states>.
- 215.** All data reported in Sarah Leberstein, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, National Employment Law Project, October 2011.
- 216.** Tim Judson and Cristina Francisco-McGuire, *Where Theft is Legal: Mapping Wage Theft Laws in the 50 States*, Progressive States Network, June 2012, 17–20, <http://www.progressivestates.org/pubs/reports/where-theft-legal-mapping-wage-theft-laws-in-the-50-states>.
- 217.** American Legislative Exchange Council, *Independent Contractor Definition Act*, 1996 Sourcebook of American State Legislation, [www.alecexposed.org](http://www.alecexposed.org). ALEC’s model legislation simply requires that “independent contractors” sign a statement stipulating they have met four loosely defined criteria: They have a Social Security number, they have control over the means and manner in which the work is performed, they have control over the time when the work is performed (although this “does not

prohibit the employer from reaching agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person”), and they represent themselves as being in business for themselves. It appears that under ALEC’s definition, a company such as Microsoft—which famously lost a class-action suit for falsely defining thousands of programmers as “independent contractors”—could revive the practice of hiring mass numbers of “independent contractors” to work side-by-side with employees, as long as the former had a contract stating they were independent contractors, and were provided some leeway over how and on what schedule to do the work, understanding they were still committed to fixed deadlines. Likewise, it would seem that a construction company might hire almost all construction workers under this language and call them “independent contractors,” as long as a supervisor was not telling them exactly how to do their job—but telling them it all had to be done according to blueprints and specifications, and on a certain time schedule.

**218.** U.S. Chamber of Commerce, *The Impact of State Employment Policies on Job Growth: A 50-State Review*, 2011, 26.

**219.** U.S. Chamber of Commerce, *The Impact of State Employment Policies on Job Growth: A 50-State Review*, 2011, 40.

**220.** Text of the bill is available at [http://www.mainelegislature.org/legis/bills/bills\\_125th/chapters/PUBLIC643.asp](http://www.mainelegislature.org/legis/bills/bills_125th/chapters/PUBLIC643.asp). For a summary, see Pierce Atwood LLP, *2012 Summary of New Maine Laws*, June 1, 2012, 6. It explains that under the new test, an independent contractor must satisfy all five of one set of criteria, and three out of seven of a second set. The five mandatory criteria are that (1) the person has the essential right to control the means and progress of the work except as to the final results; (2) the person is customarily engaged in an independently established trade, occupation, profession, or business; (3) the person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity; (4) the person hires and pays the person’s assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants’ work; and (5) the person makes the person’s services available to some client or customer community even if the person’s right to do so is voluntarily not exercised or is temporarily restricted. A contractor must then also meet at least three of these seven factors: (1) the person has a substantive investment in the facilities, tools, instruments, materials, and knowledge used by the person to complete the work; (2) the person is not required to work exclusively for the other individual or entity; (3) the person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work; (4) the parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work; (5) payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person; (6) the work is outside the usual course of business for which the service is performed; or (7) the person has been determined to be an independent contractor by the federal Internal Revenue Service.

**221.** National Federation of Independent Business, “New Laws Affect Wide Range of Business Activity,” <http://www.nfib.com/nfib-in-my-state/nfib-in-my-state-content?cmsid=60000>.

**222.** Description of both the bill and the process leading up to it are in Maine State Chamber of Commerce, “Labor Issues,” *Impact, Final Summary Edition: Second Regular Session of the 125<sup>th</sup> Maine Legislature*, May 2012, 9–12.

**223.** Text of HB 420 is available at <http://www.gencourt.state.nh.us/legislation/2012/HB0420.html>. For descriptions of the law’s impact, see Edward M. Kaplan, Jeanine L. Poole, and William D. Pandolph, eds., “NHDOL Issues New Poster with Revised Independent Contractor Criteria,” *New Hampshire Employment Law Letter*, November 1, 2012, <http://benefits.hrlaws.com/node/1217314>; and Karyl Roberts Martin, “New Test for Classifying Independent Contractors in New Hampshire,” *Business Law Insights* blog, August 24, 2012, <http://blog.sheehan.com/index.php/business-litigation/classifying-independent-contractors/>. From more on support from the business community, see Bob Sanders, “Business Groups Give Lawmakers a B for Their Work in the Last Session,” *New Hampshire Business Review*, July 13, 2012, <http://www.nhbr.com/news/967654-395/business-groups-give-lawmakers-a-b-for.html>.

- 224.** The text of Ohio's HB 522 is at [http://www.legislature.state.oh.us/bills.cfm?ID=129\\_HB\\_522](http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_522). The bill allows employers to declare truck drivers "independent contractors" if they meet at least four of seven criteria, one of which is having signed a statement declaring themselves to be independent contractors. The bill was co-sponsored by Rep. Peter Beck, a member of ALEC's Telecommunications and Information Technology Task Force, and Rep. Gerald Stebelton, a member of ALEC's Education Task Force, among others. See American Legislative Exchange Council, "Telecommunications & Information Technology Task Force," committee roster, July 28, 2011, 2, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/telecom&it\\_updated\\_35-day\\_mailing%20New%20Orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/telecom&it_updated_35-day_mailing%20New%20Orleans.pdf); American Legislative Exchange Council, "Education," committee roster, July 1, 2011, 16, [http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/education\\_35-day\\_mailing%20-%20new%20orleans.pdf](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/education_35-day_mailing%20-%20new%20orleans.pdf).
- 225.** Ohio Same Day Transportation Association, "Ohio Legislator Visits Local Courier to Observe Daily Operations," July 12, 2012, <http://www.ohiosamedaytransportation.org/news>.
- 226.** Elise Gould, Kai Filion, and Andrew Green, *The Need for Paid Sick Days: The Lack of a Federal Policy Further Erodes Family Economic Security*, Economic Policy Institute, Briefing Paper #319, June 29, 2011, [http://www.epi.org/publication/the\\_need\\_for\\_paid\\_sick\\_days/](http://www.epi.org/publication/the_need_for_paid_sick_days/).
- 227.** Elise Gould, Kai Filion, and Andrew Green, *The Need for Paid Sick Days: The Lack of a Federal Policy Further Erodes Family Economic Security*, Economic Policy Institute, Briefing Paper #319, June 29, 2011, [http://www.epi.org/publication/the\\_need\\_for\\_paid\\_sick\\_days/](http://www.epi.org/publication/the_need_for_paid_sick_days/).
- 228.** Results from a survey of San Francisco employers and employees are reported in Vicki Shiabo, "San Francisco Paid Sick Days Law Is a Proven Success," National Partnership for Women and Families blog, February 16, 2011, <http://blog.nationalpartnership.org/index/php/2011/02/san-fancisco-success/>.
- 229.** U.S. Chamber of Commerce, *Labor and Immigration: Policies Positions and Activities 2008*.
- 230.** Campaign for a Healthy Denver and ROC United, *The National Restaurant Association: Behind the Fight Against Working Families and an Economy that Works for All*, October 2011, 1, <http://familyvaluesatwork.org/wp-content/uploads/2011/10/NRA-CO-Report-and-Coversheet.pdf>.
- 231.** Louisiana Senate Bill 521 prohibits any local government within the state from establishing a local requirement for a minimum number of vacation or paid or unpaid sick days (text of the bill is available at <http://legiscan.com/LA/text/SB521/id/654635/Louisiana-2012-SB521-Chaptered.pdf>). There are an estimated 600,000 workers in Louisiana who lack even a single day of paid sick leave, yet the bill was adopted by a vote of 37-0 in the state Senate. See Vicki Shabo, "An Underhanded Threat to Working Families in Louisiana and Throughout the Country," National Partnership for Women and Families, May 31, 2012, <http://www.nationalpartnership.org/blog/general/threat-to-louisiana.html>. On the Wisconsin measures, see Joel Dresang, "Researcher Sees Both Sides of Sick Pay Debate," *Journal Sentinel*, November 21, 2008, <http://www.jsonline.com/business/34916009.html>. The Milwaukee ordinance had guaranteed a minimum of one hour of paid sick leave for every 30 hours worked, up to a maximum of nine sick days per calendar year; firms with fewer than 10 employees had a maximum of only five days per year. See Pamela Ploor and Mike Fischer, "Milwaukee Paid Sick Leave Ordinance Revived by Court of Appeals," March 2011, [http://www.quarles.com/milwaukee\\_paid\\_sick\\_leave\\_ordinance\\_2011/#\\_ftn2](http://www.quarles.com/milwaukee_paid_sick_leave_ordinance_2011/#_ftn2). For support of Wisconsin Manufacturers and Commerce, see Wisconsin Manufacturers and Commerce, "Wisconsin Business Climate Improves in 2011," December 20, 2011, <http://www.wmc.org/news/press-releases/wisconsin-business-climate-improves-in-2011>.
- 232.** HB 655 actually prohibits localities from mandating any wage or benefit standards higher than dictated by state or federal law for private employers. City and county governments are still permitted to establish wage and benefit standards for their own employees and for employees of private companies that contract with them or to whom they provide direct subsidies or tax

abatements; thus the law does not overturn “living wage” ordinances previously adopted in the cities of Gainesville, Orlando, and Miami Beach and in Palm Beach, Miami-Dade, and Broward counties. See Florida House of Representative, “Final Bill Analysis: CS/HB 655,” May 14, 2013, <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0655z.LFAC.DOCX&DocumentType=Analysis&BillNumber=0655&Session=2013>.

- 233.** Quoted in Brendan Fischer, “Efforts To Deliver ‘Kill Shot’ to Paid Sick Leave Tied to ALEC,” Center for Media and Democracy, April 3, 2013, <http://www.prwatch.org/news/2013/04/12037/efforts-deliver-kill-shot-paid-sick-leave-tied-alec>.
- 234.** For this history, see David Darmon and Aaron Deslatte, “Scott Blocks Paid Sick-Time Vote in Orange, Statewide,” *Orlando Sentinel*, June 16, 2013, <http://www.orlandosentinel.com/news/local/breakingnews/os-scott-signs-local-paid-sick-time-ban-20130614,0,6200216.story>.
- 235.** Annie-Rose Strasser, “ALEC-Orchestrated Bill in Florida Would Block Cities from Making Paid Sick Leave Laws,” *Think Progress*, April 3, 2013, <http://thinkprogress.org/economy/2013/04/03/1817161/alec-florida-paid-sick/>.
- 236.** For more on HB 1323, see Will Stewart, “Tallying the Legislative Score,” *Capitol Insight*, Greater Manchester Chamber of Commerce, June 2012, <http://archive.constantcontact.com/fs012/1102100181361/archive/1110192336720.html>.
- 237.** The ALEC-affiliated lawmakers who co-introduced the bill are Sen. Alberta Darling, member of ALEC’s Commerce, Insurance and Economic Development Task Force, and Sen. Glenn Grothman, member of ALEC’s Education Task Force and International Relations Task Force. See Center for Media and Democracy, *ALEC Exposed Wisconsin: Hijacking of a State*, 2012, [http://alecexposed.org/w/images/c/cd/ALEC\\_Exposed\\_in\\_Wisconsin.pdf](http://alecexposed.org/w/images/c/cd/ALEC_Exposed_in_Wisconsin.pdf). The text of SB 8 is available at <http://docs.legis.wisconsin.gov/2011/related/proposals/sb8>. Among other changes, SB 8 would have eliminated employees’ right to take intermittent leave to care for a newborn, allowed employers to force employees to use up vacation and sick leave before taking FMLA, allowed employers of two people who have a newborn together to force this couple to split what would normally be a single employee’s length of leave, and allowed employers to transfer employees returning from FMLA leave to a new position with equal pay, even if the old position is vacant. For a summary of changes proposed in SB 8, see Jeffrey Jones, “Wisconsin FMLA Law Expected to Federalize,” *Ruder Ware Employment, Labor, and Benefits Legal Update*, May 2, 2011, <http://www.ruderware.com/resourcecenter/la/WisconsinFMLALawExpectedtoFederalize.htm>.
- 238.** This bill did not become law. Text of the bill is available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=S&billTyp=B&billNbr=0870&pn=0935>. Sen. Bob Robbins explains that the bill “repeals an entitlement in the Public School Code for 10 paid sick days per year and paid sabbatical leave, leaving these issues up to collective bargaining between districts and teachers’ unions.” See Office of Sen. Bob Robbins, “Harrisburg Happenings,” April 5, 2011, <http://www.senatorrobbins.com/enews/session-wrap/2011/040811.htm>. Of the bill’s 13 co-sponsors, five were ALEC members: Sen. John Eichelberger, (former) Sen. Jeffrey Piccola, Sen. Lisa Baker, Sen. Jane Earll, and Sen. Patrick Browne. See Center for Media and Democracy, “Pennsylvania ALEC Politicians,” [http://www.sourcewatch.org/index.php/Pennsylvania\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Pennsylvania_ALEC_Politicians).
- 239.** These bills abolished the state’s Construction Safety Standards Commission, the General Industry Safety Standards Commission, and the Occupational Health Standards Commission. All of these are appointed commissions that had been charged with recommending new workplace regulations. Instead, authority to issue new regulations was transferred to the Department of Licensing and Regulatory Affairs, but that agency was permitted to issue regulations that exceed federal standards only if it could demonstrate a clear and convincing need based on Michigan’s industry being fundamentally different from the industries nationally. For legislative analysis of the bills, see Michigan House Fiscal Agency, “Legislative Analysis: Abolish OSHA Standards Commissions,” November 27, 2012, <https://www.legislature.mi.gov/documents/2011-2012/billanalysis/House/pdf/2011-HLA-5917-65880DB7.pdf>. For corporate lobby support, see Michigan House Fiscal Agency, “Legislative Analysis: Abolish



- OSHA Standards Commissions,” November 29, 2012, <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/House/pdf/2011-HLA-5917-01230FE5.pdf>.
- 240.** State of Michigan, 96th Legislature, Regular Session of 2011, “Enrolled Senate Bill No. 20,” March 24, 2011, <http://www.legislature.mi.gov/documents/2011-2012/publicact/htm/2011-PA-0010.htm>. This bill was sponsored by Sen. Rick Jones, a longtime ALEC member who resigned his membership in 2012. See Center for Media and Democracy, “Michigan ALEC Politicians,” [http://www.sourcewatch.org/index.php/Michigan\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Michigan_ALEC_Politicians); Progress Michigan, “Corporate Sponsors Quit ALEC, Lansing Politicians Should Follow Suit,” April 10, 2012, <http://www.progressmichigan.org/2012/04/corporate-sponsors-quit-alec-lansing-politicians-should-follow-suit/>. For corporate lobbies’ support, see Wendy Block, director of Health Policy and Human Resources, Michigan Chamber of Commerce, “MI Chamber Supports Statutory End to Job-Killing Ergonomics Rule, SB 20,” memorandum to the Michigan House of Representatives, February 23, 2011, <http://www.michamber.com/files/michamber.com/documents/Memo-Hse-SB%2020-Supp.pdf>; Michigan Restaurant Association, “Prohibition of Mandatory Workplace Ergonomics Rules Passes Senate, Teed Up in the House,” press release, <http://www.michiganrestaurant.org/displaycommon.cfm?an=1&subarticlenbr=1237>; and National Federation of Independent Business, *Voting Record 2011-12 Michigan*, <http://www.nfib.com/LinkClick.aspx?fileticket=MgmXJS8qzi4%3D&tabid=1018>.
- 241.** In 2011, the latest year on record, 27,690 people experienced repetitive motion injuries and were off the job for a median of 24 days. More than 53 percent of employees with repetitive motion injuries lost 21 days or more of work, and more than 44 percent (about 12,000 workers) lost 31 days or more of work. See Bureau of Labor Statistics, “R. 70. Detailed Event or Exposure by Number of Days Away from Work” [days away from work x worker demographics and case characteristics], 2011, 21, <http://www.bls.gov/iif/oshwc/osh/case/ostb3272.pdf>; Bureau of Labor Statistics, “Case and Demographic Characteristics for Work-Related Injuries and Illnesses Involving Days Away From Work,” various dates, <http://www.bls.gov/iif/oshcdnew.htm>.
- 242.** Centers for Disease Control and Prevention, “Work-Related Musculoskeletal Disorders (WMSDs) Prevention,” <http://www.cdc.gov/workplacehealthpromotion/evaluation/topics/disorders.html>; Board on Human-Systems Integration and the Institute of Medicine, *Musculoskeletal Disorders and the Workplace: Low Back and Upper Extremities* (National Academies Press, 2001), 58, [http://www.nap.edu/openbook.php?record\\_id=10032&page=58](http://www.nap.edu/openbook.php?record_id=10032&page=58).
- 243.** Wendy Block, director of health policy and human resources, Michigan Chamber of Commerce, “MI Chamber Supports Statutory End to Job-Killing Ergonomics Rule, SB 20,” memorandum to the Michigan House of Representatives, February 23, 2011, <http://www.michamber.com/files/michamber.com/documents/Memo-Hse-SB%2020-Supp.pdf>; Michigan Restaurant Association, “Prohibition of Mandatory Workplace Ergonomics Rules Passes Senate, Teed Up in the House,” <http://www.michiganrestaurant.org/displaycommon.cfm?an=1&subarticlenbr=1237>.
- 244.** American Legislative Exchange Council, “Resolution Opposing Ergonomic Regulations Based on Unsound Science,” 1996 Sourcebook of American State Legislation, <http://www.alecexposed.org>.
- 245.** American Legislative Exchange Council, *Proposed Resolution Opposing Proposed Ergonomics Work Restriction Protection Plan*, adopted by ALEC Board of Directors, 2000, <http://www.alecexposed.org>.
- 246.** The text of HB 1574 is available at <http://legiscan.com/NH/text/HB1574/id/507508>. As initially introduced, the bill completely eliminated the requirement for employers to provide a meal break. The bill passed in amended form, which retained the requirement for meal breaks but allowed employers to make employees work for six hours rather than five before they could take a meal break.
- 247.** Bob Allen, “Wal-Mart Employees Denied Lunch Breaks Awarded \$172 Million,” *Ethics Daily*, December 28, 2005, <http://www.ethicsdaily.com/wal-mart-employees-denied-lunch-breaks-awarded-172-million-cms-6756-printer>.

- 248.** Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Heckathorn, Mirabai Auer, James DeFilippis, Ana Luz González, Victor Narro, Jason Perelshteyn, Diana Polson, and Michael Spiller, *Broken Laws, Unprotected Workers: Violation of Employment and Labor Laws in America's Cities*, National Employment Law Project, 2009, <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.
- 249.** Greater Nashua Chamber of Commerce, "This Week," *The Advocate*, March 16, 2012, [http://www.nashuachamber.com/the\\_advocate/2012/2012-03-16.htm](http://www.nashuachamber.com/the_advocate/2012/2012-03-16.htm).
- 250.** Rep. Kyle Jones, quoted in Ray Duckler, "Lunch Breaks on the Chopping Block," *Concord Monitor*, February 8, 2012, <http://www.concordmonitor.com/news/4438134-95/jrhoell-markmackenzie>.
- 251.** Quoted in Ray Duckler, "Lunch Breaks on the Chopping Block," *Concord Monitor*, February 8, 2012, <http://www.concordmonitor.com/news/4438134-95/jrhoell-markmackenzie>.
- 252.** U.S. Chamber of Commerce, *The Impact of State Employment Policies on Economic Growth: A 50-State Review*, 2011, 28.
- 253.** American Legislative Exchange Council, *Resolution Opposing Comparable Worth Legislation*, adopted by the ALEC Board of Directors, September 1999, [www.alecexposed.org](http://www.alecexposed.org). ALEC's bill further suggests that, when one controls for the proper variables, women are already being paid just about the same as men.
- 254.** U.S. Chamber of Commerce, *Key Vote Letter on S. 3220, the "Paycheck Fairness Act,"* June 4, 2012, <http://www.uschamber.com/issues/letters/2012/key-vote-letter-s-3220-paycheck-fairness-act>.
- 255.** American Legislative Exchange Council, *Resolution Opposing Comparable Worth Legislation*, adopted by the ALEC Board of Directors, September 1999, [www.alecexposed.org](http://www.alecexposed.org).
- 256.** The text of SB 202 is available at <http://docs.legis.wisconsin.gov/2011/proposals/sb202>. The bill repeals 2009's Act 20. Prior to Act 20, a victim of employment discrimination (in hiring, firing, promotion, or terms of employment) could go to the state's Department of Workforce Development, which could order reinstatement plus up to two years' back pay, along with paying costs and attorney fees. Act 20 added the right of the department, or of discrimination victims themselves, to bring a suit in circuit court for compensatory and punitive damages. Act 20 capped damages based on federal caps existing at that time; because Act 20 indexed the caps to inflation, over time the caps would be higher in state court than federal, as federal caps are not indexed. A good explanation of the law is provided by Wisconsin Manufacturers and Commerce. For its statement explaining and endorsing SB 202, see Wisconsin Manufacturers and Commerce, "Senate Bill 202 – Repeal of Compensatory and Punitive Damages Under WFEA," October 19, 2011, [http://www.wmc.org/PDFfiles/gr/SB\\_202\\_testimony\\_10.19.11.pdf](http://www.wmc.org/PDFfiles/gr/SB_202_testimony_10.19.11.pdf). SB 202 had seven primary sponsors, who introduced the bill together: Sens. Grothman, Galloway, Darling, Lasee, Kedzie, Zipperer, and Moulton. All are ALEC members, and Zipperer is a member of ALEC's Civil Justice Task Force. See Center for Media and Democracy, "Wisconsin ALEC Politicians," [http://www.sourcewatch.org/index.php/Wisconsin\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Wisconsin_ALEC_Politicians).
- 257.** Wisconsin Manufacturers and Commerce, "Senate Bill 202 – Repeal of Compensatory and Punitive Damages Under WFEA," October 19, 2011, [http://www.wmc.org/PDFfiles/gr/SB\\_202\\_testimony\\_10.19.11.pdf](http://www.wmc.org/PDFfiles/gr/SB_202_testimony_10.19.11.pdf).
- 258.** See [http://legis.wisconsin.gov/lc/comtmats/files/sb0202\\_20111020160235.pdf](http://legis.wisconsin.gov/lc/comtmats/files/sb0202_20111020160235.pdf). For additional NFIB statements on this bill, see National Federation of Independent Business, "Unfinished Business in the Legislature," <http://www.nfib.com/nfib-in-my-state/nfib-in-my-state-content?cmsid=58888>; Wisconsin Civil Justice Council, "Wisconsin Employers Call on Senate to Repeal Punitive and Compensatory Damages under 'Fair Employment Act,'" November 1, 2011, [http://www.wispolitics.com/1006/111101\\_WCJC2.pdf](http://www.wispolitics.com/1006/111101_WCJC2.pdf).

- 259.** Wisconsin Government Accountability Board, *Senate Bill 2012: Organizations Lobbying*, April 9, 2012, <http://ethics.state.wi.us/scripts/currentSession/LegProps.asp?key-REGSB202>.
- 260.** See Dave Jamieson, “Minimum Wage, Labor Investigations Target of Missouri Republicans,” *Huffington Post*, April 28, 2011, [http://www.huffingtonpost.com/2011/04/28/missouri-republicans-minimum-wage\\_n\\_855117.html](http://www.huffingtonpost.com/2011/04/28/missouri-republicans-minimum-wage_n_855117.html).
- 261.** Text of the bill is available at [http://www.senate.mo.gov/11info/BTS\\_Web/Bill.aspx?SessionType=R&BillID=4095341](http://www.senate.mo.gov/11info/BTS_Web/Bill.aspx?SessionType=R&BillID=4095341).
- 262.** Text of the bill is available at <http://www.house.mo.gov/billsummary.aspx?bill=HB1219&year=2012&code=R>.
- 263.** Missouri Chamber of Commerce and Industry, “Missouri Senate Committee Votes to Pass Whistleblower Protection Act,” <http://www.mochamber.com/mx/hm.asp?id=051112whistle>.
- 264.** ALEC, *Economic Civil Rights Act*, 1995 Sourcebook of American State Legislation.
- 265.** ALEC, *Right to Work Act*, 1995 Sourcebook of American State Legislation.
- 266.** ALEC, *Open Contracting Act*, 1995 Sourcebook of American State Legislation.
- 267.** ALEC, *Political Funding Reform Act*, approved by ALEC Board of Directors, January 1999.
- 268.** U.S. Chamber of Commerce, *The Impact of State Employment Policies on Job Growth: A 50-State Review*, 2011.
- 269.** U.S. Chamber of Commerce, *The Impact of State Employment Policies on Job Growth: A 50-State Review*, 2011.
- 270.** U.S. Chamber of Commerce, *The Impact of State Employment Policies on Job Growth: A 50-State Review*, 2011.
- 271.** National average weekly benefits were \$308 in the fourth quarter of 2009. See U.S. Department of Labor, Employment Training Administration, “Unemployment Insurance Data Summary, Summary Tables: 4th Quarter 2009,” [http://workforcesecurity.doleta.gov/unemploy/content/data\\_stats/datasum09/DataSum\\_2009\\_4.pdf](http://workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum09/DataSum_2009_4.pdf). National average of UI benefits was about \$300 in 2010, 2011, and 2012. See Chad Stone and William Chen, *Introduction to Unemployment Insurance*, Center on Budget and Policy Priorities, February 6, 2013, <http://www.cbpp.org/files/12-19-02ui.pdf>.
- 272.** The national unemployment rate averaged 9.3 percent in 2009 and 9.6 percent in 2010. Monthly unemployment peaked at 10.0 percent in October 2009. See Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, Seasonally Adjusted Unemployment, 2003–2013, <http://data.bls.gov/timeseries/LNS14000000>.
- 273.** The number of job seekers per job opening peaked at 6.4 in November 2009. See Heidi Shierholz, “Number of Job Seekers Per Job Opening Rises to 6.4 in November,” Economic Policy Institute, January 12, 2010, [http://www.epi.org/publication/number\\_of\\_job\\_seekers\\_per\\_job\\_opening\\_rises\\_to\\_6-4\\_in\\_november/](http://www.epi.org/publication/number_of_job_seekers_per_job_opening_rises_to_6-4_in_november/). There were 4.6 seekers for every opening in October 2010 (see Chris Isidore, “Job Openings Remain Scarce for Unemployed,” *CNNMoney*, October 7, 2010, [http://money.cnn.com/2010/10/07/news/companies/job\\_openings\\_hiring/index.htm](http://money.cnn.com/2010/10/07/news/companies/job_openings_hiring/index.htm)) and in December 2010 (see George Erickcek, “The Number of Job Seekers Per Job Opening Remains High,” Upjohn Institute blog, <http://www.upjohn.org/node/461>).
- 274.** American Legislative Exchange Council, *Resolution Opposing Federal Mandates on Unemployment Insurance*, approved by ALEC Board of Directors, August 27, 2009, [alecexposed.org](http://alecexposed.org).
- 275.** The forced-work would be paid at 90 percent of the state minimum wage, but not less than the federal minimum; food stamp recipients who are aged, blind, or disabled would be exempted from the forced-work requirement. See American Legislative Exchange Council, *Full Employment Act*, 1995 Sourcebook of American State Legislation, [alecexposed.org](http://alecexposed.org).

- 276.** Five states reduced the number of weeks of maximum benefit, and five reduced the weekly benefit one can receive. For an overview of recent UI changes, see Mike Evangelist, *Policy Brief: One-Two Punch: As States Cut Unemployment Benefit Weeks, Jobless Also Lose Federal Aid, Even as Jobs Remain Scarce*, National Employment Law Project, February 2013, <http://www.nelp.org/page/-/UI/2013/Policy-Brief-States-Cut-UI-Weeks.pdf>.
- 277.** Mike Evangelist, *One-Two Punch: As States Cut Unemployment Benefit Weeks, Jobless Also Lose Federal Aid, Even as Jobs Remain Scarce*, National Employment Law Project, February 2013, <http://www.nelp.org/page/-/UI/2013/Policy-Brief-States-Cut-UI-Weeks.pdf>.
- 278.** These changes were made by HB 1450 and SB 86, respectively, passed in 2011.
- 279.** This was part of the budget bill, Wisconsin Act 32, and was effective beginning January 1, 2012. Text of the bill is available at <http://docs.legis.wisconsin.gov/2011/related/acts/32>. The Wisconsin Department of Workforce Development estimates that the imposition of a one-week waiting time will cost unemployed workers a total of \$45.2 million per year. See Wisconsin Department of Workforce Development, *2011 Annual Report*, [http://dwd.wisconsin.gov/dwd/pdf/annual\\_report\\_2011.pdf](http://dwd.wisconsin.gov/dwd/pdf/annual_report_2011.pdf).
- 280.** LD 1725, adopted in 2012.
- 281.** Tennessee General Assembly, *Bill Summary: SB 3658, The "Unemployment Insurance Accountability Act of 2012,"* <http://wapp.capitol.tn.gov/apps/billinfo/BillSummaryArchive.aspx?BillNumber=SB3658&ga=107>. SB 3658 was sponsored by Sens. Johnson, Ramsey, Watson, Ketron, Bell, and Tracy; all but Watson are current or former ALEC members. See Center for Media and Democracy, "Tennessee ALEC Politicians," [http://www.sourcewatch.org/index.php/Tennessee\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Tennessee_ALEC_Politicians).
- 282.** Tennessee General Assembly, *Bill Summary: SB 3658, The "Unemployment Insurance Accountability Act of 2012,"* <http://wapp.capitol.tn.gov/apps/billinfo/BillSummaryArchive.aspx?BillNumber=SB3658&ga=107>.
- 283.** U.S. Bureau of Labor Statistics, "Table 26. States: Unemployed Persons by Sex, Race, Hispanic or Latino Ethnicity, and Duration of Unemployment, 2011 Annual Average," September 17, 2012, <http://www.bls.gov/opub/gp/gpsec2.htm>. Pew Research Center reports that in 2011, 24.1 percent of unemployed Tennessee residents had been out of work for at least one year. See Rebecca D. Williams, "Long-Term Unemployment Takes Its Toll: 'You Get So Down and Out,'" *Knoxville News Sentinel*, February 17, 2013, <http://www.knoxnews.com/news/2013/feb/17/long-term-unemployment-takes-its-toll-you-get-so/?print=1>.
- 284.** Brian Reisinger, "Businesses Push Efforts to Reform Tennessee Unemployment," *Nashville Business Journal*, March 16, 2012, <http://www.bizjournals.com/nashville/print-edition/2012/03/16/tennessee-reform-unemployment.html?page=all>.
- 285.** So too, it appears that ALEC is not opposed to government bureaucracy *per se*, but only to bureaucracy that serves to strengthen workers' leverage in the labor market. While the organization's "Full Employment Program" mandates minimum-wage labor for most employees, for "skilled" labor ALEC's proposal would create a costly and laborious government bureaucracy: A state agency would determine the appropriate going wage for each individual skilled occupation in each county, and would serve as a public employment agency, charging employers the determined wage rate and passing on 75 percent of that amount to employees. Furthermore, skilled employees would be entitled to the higher rate (earning 75 percent of the state-determined normal wage for their work) only for the hours that they were performing that skilled function, as opposed to hours spent performing lower-skilled tasks, for which time could be paid at minimum wage; and the higher-skilled work could not extend for more than 180 days. Thus, the state would need to monitor and enforce a huge series of wage calculations as well as determine the correct wage for hundreds of local occupations.
- 286.** Text of the bill is available at <http://legiscan.com/gaits/view/362369>. This bill was dropped when lawmakers discovered it would render the state ineligible for federal UI tax credits. See State Chamber of Oklahoma, letter to Oklahoma State Rep. Jason

- Murphey, January 27, 2011, [http://www.okstatechamber.com/additional/legcorrespondence/RepMurphey\\_HB1043\\_unemployment.pdf](http://www.okstatechamber.com/additional/legcorrespondence/RepMurphey_HB1043_unemployment.pdf).
- 287.** Text of the bill is available at <http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=1539&pn=3550>. Pennsylvania's law is modeled on the *Georgia Works* program, established in 2003. For a description of that program, see Ross Eisenbrey, *Georgia Works Doesn't Work, Working Economics* (Economic Policy Institute blog), September 7, 2011, <http://www.epi.org/blog/georgia-works-doesnt-work>.
- 288.** Irwin Stelzer, *Lessons of the U.S. Job Machine*, American Enterprise Institute, Washington, D.C., May 1997.
- 289.** "The Week," *National Review Online*, May 28, 2012, <https://www.nationalreview.com/nrd/articles/299738/week?pg=3>. Quoted in John Tamny, "Long Term Unemployment, and the Skills Erosion Myth," *Real Clear Markets*, May 31, 2012, [http://www.realclearmarkets.com/articles/2012/05/31/with\\_tomorrows\\_jobless\\_report\\_get\\_ready\\_for\\_the\\_myths\\_99693.html](http://www.realclearmarkets.com/articles/2012/05/31/with_tomorrows_jobless_report_get_ready_for_the_myths_99693.html).
- 290.** Quoted in Steve Benen, "Political Animal," *Washington Monthly*, July 21, 2010, [http://www.washingtonmonthly.com/archives/individual/2010\\_07/024824.php](http://www.washingtonmonthly.com/archives/individual/2010_07/024824.php).
- 291.** Arkansas SHRM State Council, "Please Support HB 1728 and SB 593," 2011, [http://www.google.com/url?sa=t&rc=t&j&q=arkansas%20sb%20593&source=web&cd=6&cad=rja&ved=0CEsQFjAF&url=http%3A%2F%2Fwww.arshrm.com%2Fpage\\_file\\_download.php%3Fid%3D40&ei=xVK0UJaGo2O0QH9hoDQCg&usq=AFQjCNGazhaf6l-kv9y5AMHWCC4Y\\_Lrnyg](http://www.google.com/url?sa=t&rc=t&j&q=arkansas%20sb%20593&source=web&cd=6&cad=rja&ved=0CEsQFjAF&url=http%3A%2F%2Fwww.arshrm.com%2Fpage_file_download.php%3Fid%3D40&ei=xVK0UJaGo2O0QH9hoDQCg&usq=AFQjCNGazhaf6l-kv9y5AMHWCC4Y_Lrnyg).
- 292.** Text of the bill is available at <http://www.arkleg.state.ar.us/assembly/2011/2011R/Bills/SB593.pdf>.
- 293.** Text of the bill is available at <http://www.arkleg.state.ar.us/assembly/2011/2011R/Bills/SB593.pdf>.
- 294.** Tom W. Smith and Jibum Kim, "Paid Sick Days: Attitudes and Experiences," Washington, D.C.: Public Welfare Foundation, 2010, <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>.
- 295.** Survey results are reported in Tom W. Smith and Jibum Kim, "Paid Sick Days: Attitudes and Experiences," Washington, D.C.: Public Welfare Foundation, 2010, <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>.
- 296.** The bill was signed into law in June 2012 as Act No. 247. Text of the bill is available at [http://www.scstatehouse.gov/sess119\\_2011-2012/prever/1125\\_20120607.htm](http://www.scstatehouse.gov/sess119_2011-2012/prever/1125_20120607.htm).
- 297.** Brian Reisinger, "Businesses Push Efforts to Reform Tennessee Unemployment," *Nashville Business Journal*, March 16, 2012, <http://www.bizjournals.com/nashville/print-edition/2012/03/16/tennessee-reform-unemployment.html?page=all>.
- 298.** Tennessee General Assembly, *Bill Summary: SB 3658, The "Unemployment Insurance Accountability Act of 2012,"* <http://wapp.capitol.tn.gov/apps/billinfo/BillSummaryArchive.aspx?BillNumber=SB3658&ga=107>. SB 3658's sponsors included Sens. Johnson, Ramsey, Watson, Ketron, Bell, and Tracy. The last three of these are affiliated with ALEC. See Center for Media and Democracy, "Tennessee ALEC Politicians," [http://www.sourcewatch.org/index.php/Tennessee\\_ALEC\\_Politicians](http://www.sourcewatch.org/index.php/Tennessee_ALEC_Politicians).
- 299.** Tennessee General Assembly, *Bill Summary: SB 3658, The "Unemployment Insurance Accountability Act of 2012,"* <http://wapp.capitol.tn.gov/apps/billinfo/BillSummaryArchive.aspx?BillNumber=SB3658&ga=107>.
- 300.** National Federation of Independent Business, "What You Need to Know About Tennessee's New Unemployment Laws," May 21, 2012, <http://www.nfib.com/tennessee/nfib-in-my-state-content?cmsid=60149>.
- 301.** Text of the bill is available at <http://www.flsenate.gov/Session/Bill/2011/7005/BillText/er/PDF>.

- 302.** Quoted in Ihosvani Rodriguez, “Hallandale Beach Lifeguard Fired After Participating in Beach Rescue,” *South Florida Sun-Sentinel*, July 3, 2012, <http://www.sun-sentinel.com/news/broward/hallandale/fl-hallandale-beach-lifeguards-20120703,0,5326638.story>.
- 303.** Text of the bill is available at <http://www.flsenate.gov/Session/Bill/2011/7005/BillText/er/PDF>. The bill’s prime sponsor, Rep. Doug Holder, is an ALEC member. See Florida Center for Investigative Reporting, “Report: Among Florida Lawmakers, ALEC’s Influence Runs Deep,” July 27, 2012, <http://fcir.org/2012/07/27/report-among-florida-lawmakers-alecs-influence-runs-deep>.
- 304.** On the very broad range of seemingly personal behaviors employers are legally permitted to restrict, monitor, or prohibit, see Lewis Maltby, *Can They Do That? Retaking Our Fundamental Rights in the Workplace* (New York: Portfolio Hardcover, 2009).
- 305.** On this point, see also Tim Judson, *The Politics of Wage Suppression: Inside ALEC’s Legislative Campaign Against Low-Wage Workers*, National Employment Law Project, February 2013, [http://nelp.3cdn.net/4fad2aaa1917c35b4b\\_iom6i63pq.pdf](http://nelp.3cdn.net/4fad2aaa1917c35b4b_iom6i63pq.pdf). The evidence suggests that corporate-backed bills also fail in general to create prosperous state economies. A recent review of the first five years of ALEC’s *Rich States, Poor States* report reveals that those states whose policies most faithfully mirrored those recommended by ALEC saw their economies grow more slowly over the past five years—with lower rates of job creation and earnings growth—than those that adopted policies ALEC rejected. See Peter Fisher, Greg LeRoy, and Philip Mattera, *Selling Snake Oil to the States: The American Legislative Exchange Council’s Flawed Prescriptions for Prosperity*, Good Jobs First, November 2012, <http://www.goodjobsfirst.org/snakeoiltothestates>.
- 306.** American Legislative Exchange Council, *Resolution in Opposition to Any Increase in the Starting (Minimum) Wage*, 1996 Sourcebook of American State Legislation, [www.alecexposed.org](http://www.alecexposed.org).
- 307.** Andy Deloney, vice president for public affairs, *Statement of the Michigan Restaurant Association in Support of House Bill 4732*, House Commerce Committee, June 21, 2011, <http://house.michigan.gov/SessionDocs/2011-2012/Testimony/Committee4-6-21-2011-4.pdf>.
- 308.** Quoted in Sandra Pedicini, “Senate Bill Could Cut Hourly Wages of Servers, Bartenders,” *Orlando Sentinel*, February 7, 2012, [http://articles.orlandosentinel.com/2012-02-07/business/os-minimum-wage-servers-20120207\\_1\\_minimum-wage-senate-bill-florida-senate-committee](http://articles.orlandosentinel.com/2012-02-07/business/os-minimum-wage-servers-20120207_1_minimum-wage-senate-bill-florida-senate-committee).
- 309.** The text of Montana HB 577 is available at <http://data.opi.mt.gov/bills/2011/billpdf/HB0577.pdf>. This law was passed by the legislature but vetoed by the governor.
- 310.** The national Republican Party’s 2012 platform included the declaration that “we pledge to restore the proper balance between the federal government and the governments closest to, and most reflective of, the American people.” See Republican Party, “We Believe in America,” *2012 Republican Platform*, 11, <http://www.gop.com/wp-content/uploads/2012/08/2012GOPPlatform.pdf>. New York State GOP Chairman Ed Cox echoed this sentiment in insisting that “Republicans believe that local control leads to safe, affordable communities.” See Edward F. Cox, “About the NY GOP,” <http://www.nygop.org/page/about-the-ny-gop>.
- 311.** Lawrence Mishel and Matthew Walters, *How Unions Help All Workers*, Economic Policy Institute, Briefing Paper #143, August 2003, [http://www.epi.org/publication/briefingpapers\\_bp143/](http://www.epi.org/publication/briefingpapers_bp143/).
- 312.** On guestworkers, see Elizabeth Dickson, “Guest Worker Programs: Impact on the American Workforce and U.S. Immigration Policy,” statement of the U.S. Chamber of Commerce before the U.S. House of Representatives, Committee on Education and the Workforce, July 19, 2006. On trade treaties, see U.S. Chamber of Commerce, “U.S. Chamber Unveils 6-Point Plan for Job Creation,” press release, September 6, 2011, <http://www.uschamber.com/press/releases/2011/september/us->

chamber-unveils-six-point-plan-job-creation. On corporate political donations, see U.S. Chamber of Commerce, “Free Speech and Democracy,” <http://www.uschamber.com/freespeech>. On “Buy American” laws, see U.S. Chamber of Commerce, “Reject ‘Buy American’ Rules,” <http://www.uschamber.com/international/agenda/reject-buy-american-rules>. On opposition to the Affordable Care Act and the creation of new entitlements to health insurance, see R. Bruce Josten, vice president, U.S. Chamber of Commerce, letter to members of the U.S. House of Representatives, March 12, 2010, <http://www.uschamber.com/sites/default/files/issues/health/files/100312hr3590patientprotectionaffordablecarehouse.pdf>. On Social Security, see U.S. Chamber of Commerce, “Social Security – The Problem,” <http://www.uschamber.com/issues/retirementpension/socialsecurity/social-security-problem>, where the organization calls for “personal accounts” similar to those proposed by President George W. Bush; and Lauren Levenstein, “Protestors Fan Out to Save Social Security – But the Chamber’s Still Opposed,” *U.S. Chamber Watch*, April 27, 2011, <http://www.fixtheuschamber.org/tracking-the-chamber/protesters-fan-out-save-social-security-chambers-still-opposed>. On tax cuts, see Mary Lu Carnevale, “U.S. Chamber to Push for Tax Cuts, Clarity on Labor Rules,” *Wall Street Journal* blog, September 2, 2010, <http://blogs.wsj.com/washwire/2010/09/02/us-chamber-to-push-for-tax-cuts-clarity-on-labor-rules>. Specifically on protecting tax benefits for carried interest, see Citizens for Tax Justice, “New ‘Compromise’ Floated by Chamber of Commerce Would Gut the Carried Interest Provision,” June 4, 2010, [http://www.ctj.org/taxjusticedigest/archive/2010/06/new\\_compromise\\_floated\\_by\\_cham.php#.Uiuv8xYyZG4](http://www.ctj.org/taxjusticedigest/archive/2010/06/new_compromise_floated_by_cham.php#.Uiuv8xYyZG4).

**313.** For a longer discussion of this issue, see Gordon Lafer, *The ‘Paycheck Protection’ Racket: Tilting the Political Playing Field Toward Corporate Power and Away from Working Americans*, Economic Policy Institute Policy Center, April 23, 2013, <http://www.epi.org/publication/paycheck-protection-racket-tilting-political/>.

**314.** For example, Michigan legislators passed a law banning school teachers from paying union dues through the payroll system, with the Michigan Chamber of Commerce arguing that the bill was needed because “in these challenging economic times, those responsible for expending government resources must be ever more vigilant that monies are being directed for the public good... Since the monitoring and collection of union dues requires financial resources, it should be the obligation of the union to undertake this activity and not look to taxpayers to ensure the collection of dues.” See Michigan Chamber of Commerce, memorandum to members of Michigan State Senate, March 7, 2012, <http://www.michamber.com/files/michamber.com/HB4929%20Senate.pdf>. But electronic payroll deductions are virtually costless. Thus, Michigan’s own Senate Fiscal Agency concluded that this bill “would have no fiscal impact on the state.” See Michigan Senate Fiscal Agency, *HB 4929: Bill Analysis*, 2012, [http://www.legislature.mi.gov/documents/2011-2012/billanalysis/Senate/pdf/2011\\_SFA-4929-S.pdf](http://www.legislature.mi.gov/documents/2011-2012/billanalysis/Senate/pdf/2011_SFA-4929-S.pdf). The Michigan House of Representatives’ legislative analysis likewise concluded that even in small school districts, “the bill would have no significant fiscal impact” because “payroll deductions for union dues ... is largely automated, so there is very little work districts must go through on a regular basis.” See Michigan House Fiscal Agency, *Legislative Analysis: House Bill 4929*, 2012, <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/House/pdf/2011-HLA-4929-3.pdf>.