

# **Bond Case Briefs**

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## **NYT: Foes of Unions Try Their Luck in County Laws.**

BOWLING GREEN, Ky. — Conservative groups are opening a new front in their effort to reshape American law, arguing that local governments have the power to write their own rules on a key labor issue that has, up to now, been the prerogative of states.

Beginning here in the hometown of Senator Rand Paul and the Chevy Corvette, groups including the American Legislative Exchange Council, the Heritage Foundation and a newly formed nonprofit called Protect My Check are working together to influence local governments the same way they have influenced state legislatures, and anti-union ordinances are just the first step in the coordinated effort they envision.

A carefully devised plan began to unfold last week, when the Warren County Fiscal Court met here and preliminarily approved, in a 6 to 1 vote, a “right to work” ordinance that would allow employees represented by a union to opt out of paying union fees. This week two more Kentucky counties, Fulton and Simpson, followed suit, and a dozen more are expected to do the same in the next six weeks.

Supporters of the effort say that if they are successful in Kentucky, they will try to pass similar local laws in Ohio, Wisconsin, Pennsylvania and other places that do not have a statewide right-to-work law. Protect My Check is promising to pay for the legal battles of any local government that tries it.

“There are literally thousands of targets for the initiative,” said Brent Yessin, an anti-union consultant and lawyer who is on the board of advisers for Protect My Check, said at a recent meeting in Washington. “Doing this county by county, city by city is more time consuming, but it’s also more time consuming and draining for the unions to fight.”

Mr. Yessin was speaking at a conference held by the exchange council, also known as ALEC, an influential organization whose supporters include the oil and pharmaceutical industries and the Koch brothers. The group has coordinated efforts to get Republican-controlled legislatures to enact a template of business-friendly legislation including privatizing education, water systems and roads and stopping the expansion of Medicaid under the Affordable Care Act. This year the group introduced a program, the American City County Exchange, to do the same for local governments.

The session on local right-to-work ordinances was open to journalists; a session on combating local minimum wage increases was not. The panelists mapped out a strategy that included raising money from local businesses, persuading lawyers to work pro bono and convincing local politicians that supporting right-to-work ordinances would not be political suicide.

Bill Londrigan, the president of the Kentucky State A.F.L.-C.I.O., objected: “This is being promoted here in Kentucky by outside interests who have nothing else in mind but to damage unions, weaken unions and lower wages.”

Under federal labor law, a union that bargains a contract for all employees can require employees who choose not be union members to pay fees to cover the cost of being represented, unless

“prohibited by state or territorial law.” About half of the states have enacted such prohibitions, becoming right-to-work states.

Kentucky provides a perfect laboratory, said Jason M. Nemes, a Louisville lawyer involved in the initiative, because it is the lone Southern state that does not have a right-to-work law, and its neighbor West Virginia, where Republicans captured control of the Legislature last month, may soon pass one. Other states where Republicans expanded their control in the midterms, like New Mexico and Wisconsin, are also considering statewide bills.

A right-to-work law became a major issue in Kentucky’s midterm elections when Republicans, who control the State Senate, promised to pass one if they gained control of the House. They fell short of that goal, priming local officials like Judge-Executive Mike Buchanon, the elected head of Warren County, to act.

“We’ve always been interested in promoting right to work, and as all of our states around us became right to work, it has become a competitive issue,” Mr. Buchanon said, asserting that many businesses would not even consider locating in areas without right-to-work laws. He added that he was put in touch with Protect My Check by Senator Paul or one of his aides and was promised that the county’s legal bills would be covered.

Mr. Yessin, based in Tampa, Fla., said his group’s donors were not public but, other than his own contribution, all of the money raised so far had been from local businesses and employers in the targeted counties.

Nearly 1,000 union members make Corvettes at a Chevrolet plant in Bowling Green, Ky. Credit Bryan Lemon for The New York Times

Last week’s vote in Bowling Green took local union members by surprise. It was advertised in advance as “an ordinance relating to the promotion of economic development and commerce,” and there was little public comment, though there were presentations by the Chamber of Commerce and the Bluegrass Institute, a policy group with close ties to ALEC.

“It was sprung on everybody,” said Connie Warren, the financial secretary of the United Automobile Workers Local 2164. “The other side had all their ducks in a row; we didn’t have even the opportunity to say how we felt about it.”

Officials acknowledged that the county was doing relatively well without a right-to-work law. “The Warren County economy is very strong; it’s very diversified,” said Ron Bunch, the president of the local Chamber of Commerce. “We have the lowest unemployment rate in Kentucky.”

But they said they lost out on many prospects, pointing to Beretta, the gun manufacturer, which chose Gallatin, Tenn., 45 miles south, over Bowling Green as its new home. “What we’re passing is putting an ‘Open for Business’ sign on our front door,” Mr. Buchanon said.

It is difficult to measure the effects of right-to-work laws on wages and jobs, but experts say they do weaken unions, discouraging organizing efforts and creating “free riders,” employees who benefit from collective bargaining but decline to pay fees. Unions and some economists argue that if right-to-work laws succeed in attracting businesses, it is because they drive down worker pay.

The ordinance will certainly be challenged in court. A recent paper by the Heritage Foundation argues that because cities and counties are not specifically prohibited from passing such laws, they can do so. Supporters say that despite earlier federal and state rulings that cities cannot pass right-to-work laws, counties are political subdivisions of the state and are thus imbued with its powers.

The Supreme Court has never ruled on the issue, but conservatives are hoping to find a sympathetic ear on the federal bench.

Lynn Rhinehart, a lawyer with the A.F.L.-C.I.O., asserted that federal law unambiguously pre-empted local ordinances and that trying to prove otherwise was a waste of taxpayer money. “Nice try — state means state,” she said. As for “territorial,” she added, “It’s fair to say it means Guam, and it doesn’t mean county.”

Conservatives, though, point to a 2002 circuit court ruling allowing right-to-work laws on tribal lands as evidence that there is wiggle room.

Mr. Buchanon said he believed that Kentuckians overwhelmingly favored the right to work and that union members had quietly told him that they did, too.

Chad Poynor, a United Auto Workers committeeman at the Corvette plant, conceded as much, saying that concessions made by the union in recent years had angered rank-and-file members, even though the recession was largely to blame.

“We haven’t had a raise in eight years, so those things are hard to swallow. You hear people all the time say, ‘If I were in a right-to-work state, I’d withdraw’ ” from the union, he said. “But you have to look at the big picture over the last 30 years, what we’ve kept. We went through a bankruptcy and kept our pension. A lot of people can’t say that.”

THE NEW YORK TIMES

By SHAILA DEWAN

DEC. 18, 2014