Overview of the History and Status of Teachers' Unions

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This deck provides a high-level overview of the context in which the *Janus* Supreme Court case is operating

Context

Oral arguments for the Supreme Court case *Janus v AFSCME* began on Feb. 26, 2018. At the heart of this case is a question about union dues and whether or not it is a violation of employees' First Amendment right to free speech for unions to charge so-called "agency fees" — fees paid by nonunion members to cover the costs of the collective bargaining process. The outcome of this case stands to have far-reaching effects on unions' finances and potentially on their power and influence.

Purpose

This deck provides a high-level overview of unions generally and teachers unions specifically in order to provide a fact base from which to understand the *Janus* case. To that end, it includes historical and current data on unions broadly and teachers unions specifically, an overview of the history of teachers unions (in particular the AFT and NEA), and a broad summary of the *Janus* case and its potential implications for teachers unions.

Disclaimer

This deck is not intended to be comprehensive; individual unions operate differently and have their own unique histories and agendas. This deck does not attempt to delve into all of these nuances.

Executive Summary

History of Unions

- Union membership peaked in the 1950s. Membership has declined since then, **primarily in the private sector**
- **Public sector union membership is consistent**, with states in the Northeast and West being most heavily unionized

History of Teachers Unions

- The AFT and NEA **won collective bargaining rights in the 1960s**, which led to important **improvements for teachers' working conditions**
- There continues to be significant controversy around **teachers unions' political involvement**

Teachers Unions Today

- The AFT and NEA spend significant amounts of money on collective bargaining, as well as on **politics and issues outside of education**
- The number of agency-fee payers is increasing, though **recent strikes may help re-energize unions**

Janus v. AFSCME

- The current legal challenge **questions the constitutionality of "agency fees"**
- There is a wide spectrum of possible rulings, but most experts expect the outcome will have a significant **negative impact on unions' revenue**

Glossary of key terms and acronyms

Term	Definition
AFSCME	The American Federation of State, County, and Municipal Employees, a union of approximately 1.4 million public employees in occupations such as law enforcement, transportation, and public works
AFT	The American Federation of Teachers, a union of approximately 1.7 million members working in occupations such as K-12 education, higher education, and health care
Agency fee	Mandatory fee for employees who are not members of a union; used to cover the costs of collective bargaining from which all employees benefit
Closed shop	A type of union-employer agreement, now illegal, where employers can only hire union members
Collective Bargaining Agreement (CBA)	A contract between an employer and the employees represented by a union that regulates terms and conditions of employment such as wages, hours, and employees' job responsibilities
Free riders	Employees who, in the absence of mandatory agency fees, would benefit from collective bargaining processes without contributing to the cost of the process

Glossary of key terms and acronyms (cont.)

Term	Definition
Local union	The local chapter of a national union, which serves a specific group of employees within a geographic region
National union	A collection of local and state affiliates that is responsible for political advocacy and providing strategic support to affiliates when necessary
NEA	The National Education Association, a union of approximately 3.8 million members working in the education sector
Right-to-work laws (RTW)	State laws that guarantee that individuals cannot be compelled to join a union or to pay dues to a union as a condition of employment
Private sector unions	Unions whose members are employed by non-public entities
Public sector unions	Unions whose members are employed by the federal, state, or local government
Union shop	A type of union-employer agreement, now illegal, where employers can agree to either hire only union members or require nonunion employees to join the union within a specified time frame

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Unions help employees bargain collectively on issues that affect all workers

What is a union?

A union is an organization of workers dedicated to **advocating for and protecting workers' rights and interests**. Unions allow workers to advocate as a group, giving them **more strength than if workers tried to negotiate individually**. Unions exist in both the public and private sectors.

Unions negotiate on behalf of their members on issues including:



Salary and wages



Working hours



Benefits including health insurance, vacation, and retirement



Working conditions including workplace health and safety

Unions may also provide members with a range of other services, including dispute resolution, access to legal counsel, and training and professional development.

Source: afscmeatwork.org, unionplus.org

Since 1890, key federal legislation has shaped labor relations in the U.S.

1890
- **Congress passes the Sherman Antitrust Act** to prevent anticompetitive practices considered harmful to consumers (monopolies, cartels, and trusts); **courts interpreted it as making many labor union activities illegal**

1914
- **Congress passes the Clayton Antitrust Act** to add further substance to the Sherman Antitrust Act; however, the Clayton Antitrust Act **included safe harbors for union activities including boycotts, strikes, picketing, and collective bargaining**

1931
- Congress passes the **Davis-Bacon Act** that establishes requirements for **federal contractors to pay the local prevailing wages on public works projects** for laborers and mechanics

1932
- Congress passes the **Norris-LaGuardia Act that bans contracts that require workers to promise not to join a union** and **limits courts' power to issue injunctions** against nonviolent labor disputes

1935
- Congress passes the **Wagner Act that guarantees private sector employees the right to organize into trade unions** and engage in collective bargaining and other collective action; **public sector workers were not included in these protections**

1938
- Congress passes the **Fair Labor Standards Act that creates a right to minimum wage and overtime pay**; it also created basic child labor laws

Union membership grew rapidly following the passage of the Wagner Act in 1935. However, the vast majority of this growth was in private sector unions, as the Wagner Act did not apply to public sector unions.

Sources: U.S. Department of Labor; Shulman, *Labor and the Anti-Trust Laws;* Meltzer, *Labor Unions, Collective Bargaining, and the Antitrust Laws*

Legislation passed in the 1950s and 1960s helped public sector unions gain momentum

1943
- Congress passes the **Smith-Connally Act** (over President Roosevelt's veto)**,** which **allows the federal government to take over industries threatened by or under strikes** that would interfere with war production and **prohibits unions from making financial contributions to federal elections**

1947
- Congress passes the **Taft-Hartley Act** (over President Truman's veto) that **prohibits many kinds of strikes and allows states to pass right-to-work laws**

1959
- Wisconsin becomes the **first state to pass legislation allowing public sector unions to bargain collectively**
- Congress passes the **Landrum-Griffin Act that regulates labor unions' internal affairs** and their officials' relationships with employers; this law applies to **private sector unions only**

1962
- President Kennedy issues Executive Order 10988 that recognizes the **right of federal employees to bargain collectively**

Between 1960 and 2010, the percent of the state and local public sector workforce that had the right to collectively bargain grew from 2 percent to 63 percent.

Source: Jeffrey Keefe, "Laws Enabling Public-sector Collective Bargaining Have Not Led to Excessive Public-sector Pay," 2015

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To curb unions' power, Congress passed laws allowing states to create "right-to-work" laws

1935 National Labor Relations Act (Wagner Act)

Sanctioned collective bargaining agreements that created:

- ✓ **"Closed shops,"** which require employers to only hire current union members and
- ✓ **"Union shops,"** which require union membership as a condition of employment

Many felt the Wagner Act gave unions too much power

1947 Taft-Hartley Act

Amended the Wagner Act by:

- ✓ **Prohibiting closed shops and union shops**
- ✓ **Creating "agency shops,"** which allow states to require nonunion members to pay agency fees to support collective bargaining
- ✓ **Allowing states to pass so-called "right-to-work" laws**

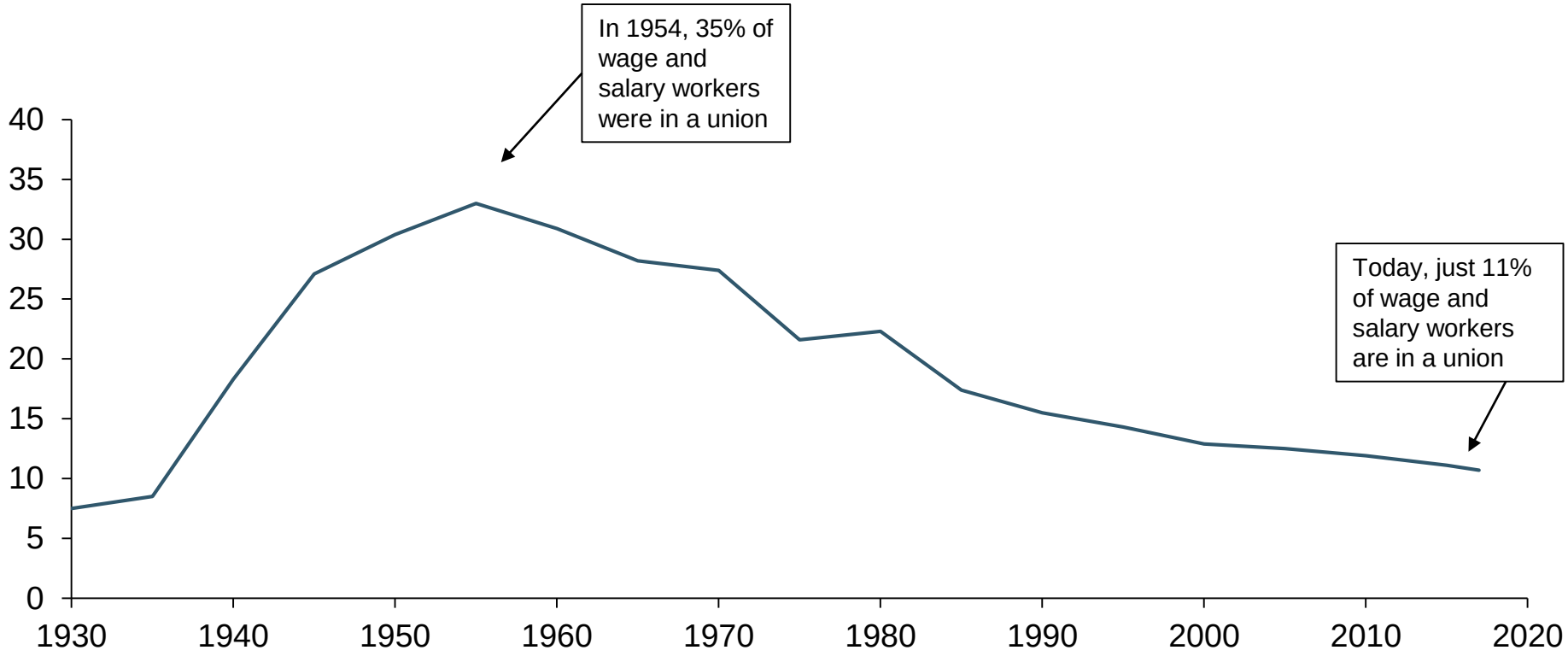
- "Right-to-work" laws **prohibit the practice of requiring employees to join a union or pay any portion of union dues** in order to obtain or keep employment.
- "Agency shops" enable unions to charge nonmembers "agency fees" to cover the costs of collective bargaining. **The Supreme Court deemed this arrangement legal in 1977 in *Abood v. Detroit Board of Education***. The legality of agency fees is once again being challenged in *Janus v. AFSCME.*

Source: U.S. Department of Labor

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Union membership peaked in the mid-1950s, when more than one-third of public and private workers were in a union

Percent of Public and Private Wage and Salary Workers Who are Members of a Union, 1930-2017



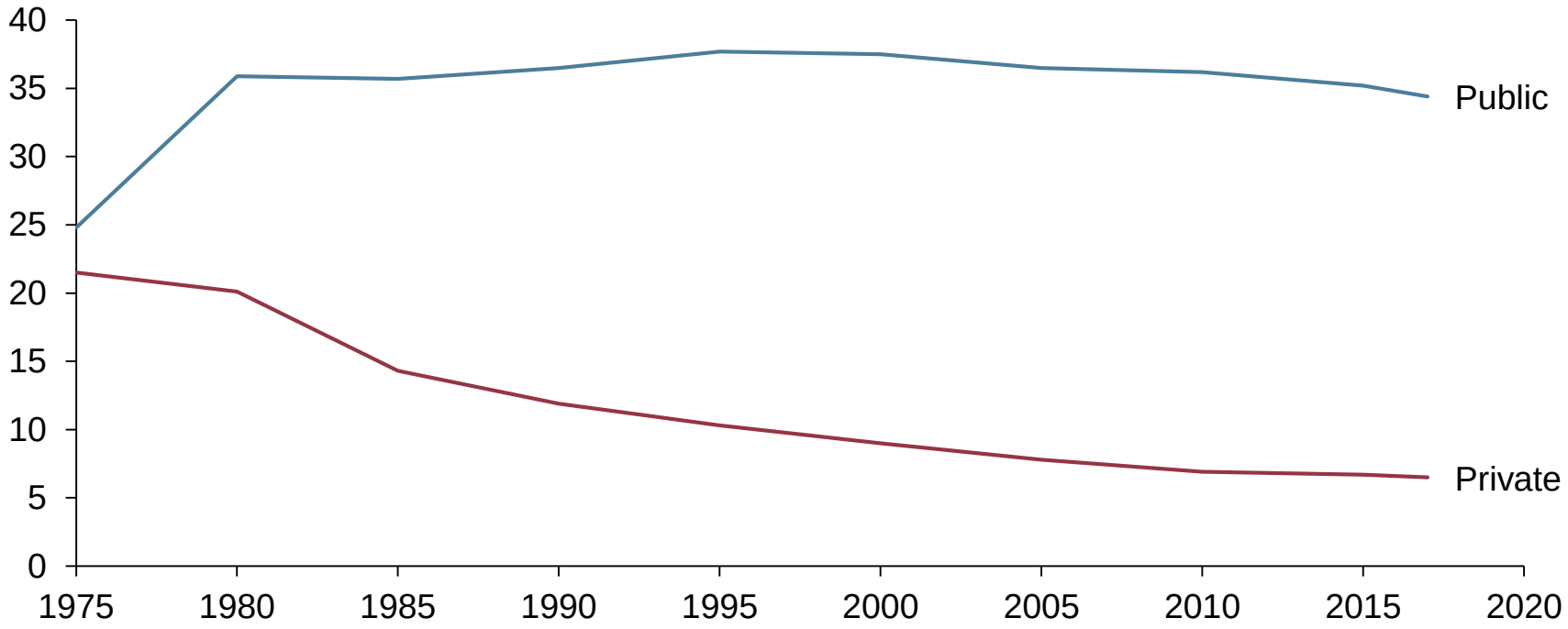
- In 2017:
  - 77% of union members were white, 15% were black, 5% were Asian, and 15% were Hispanic
  - 55% of union members were men and 45% were women

Source: Bureau of Labor Current Population Survey via unionstats.com

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Much of the decline in union membership overall is a result of significant declines in private sector union membership

Membership Rates of Public vs. Private Sector Unions, 1975-2017



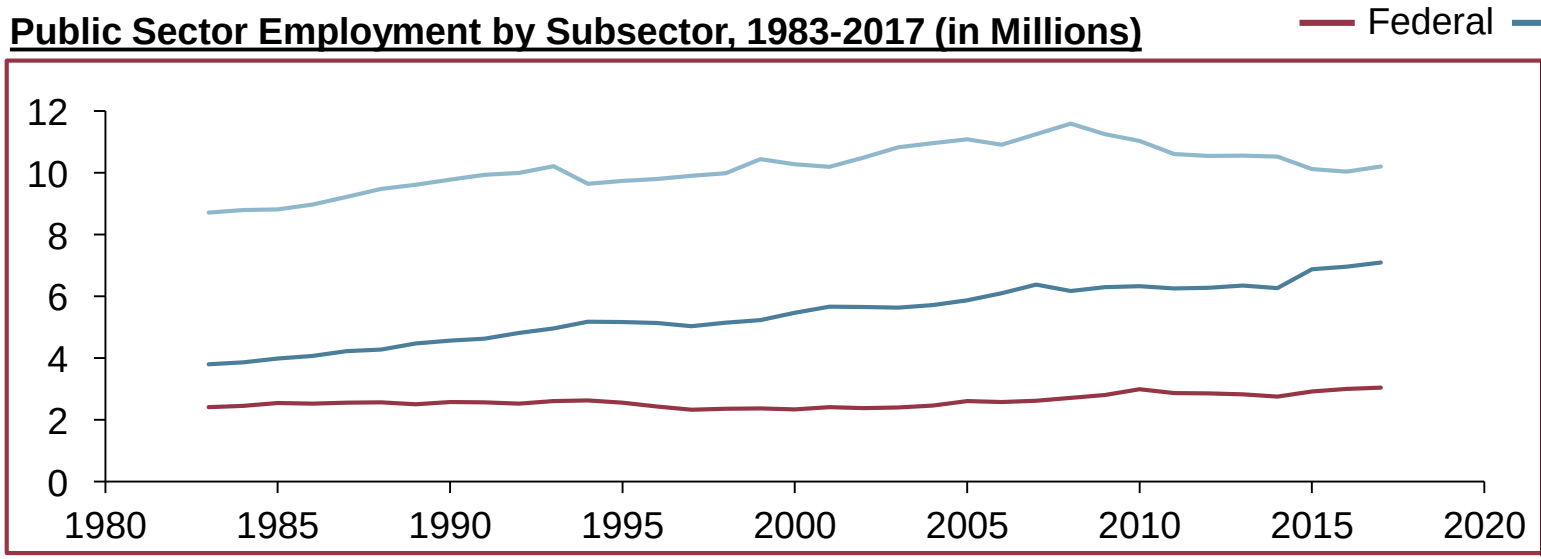
While just 6 percent of private sector employees are members of a union, more than one-third of public sector employees are. As a result, changes to existing laws around public sector unions will have a significant effect on organized labor overall.

Source: Bureau of Labor Current Population Survey via unionstats.com

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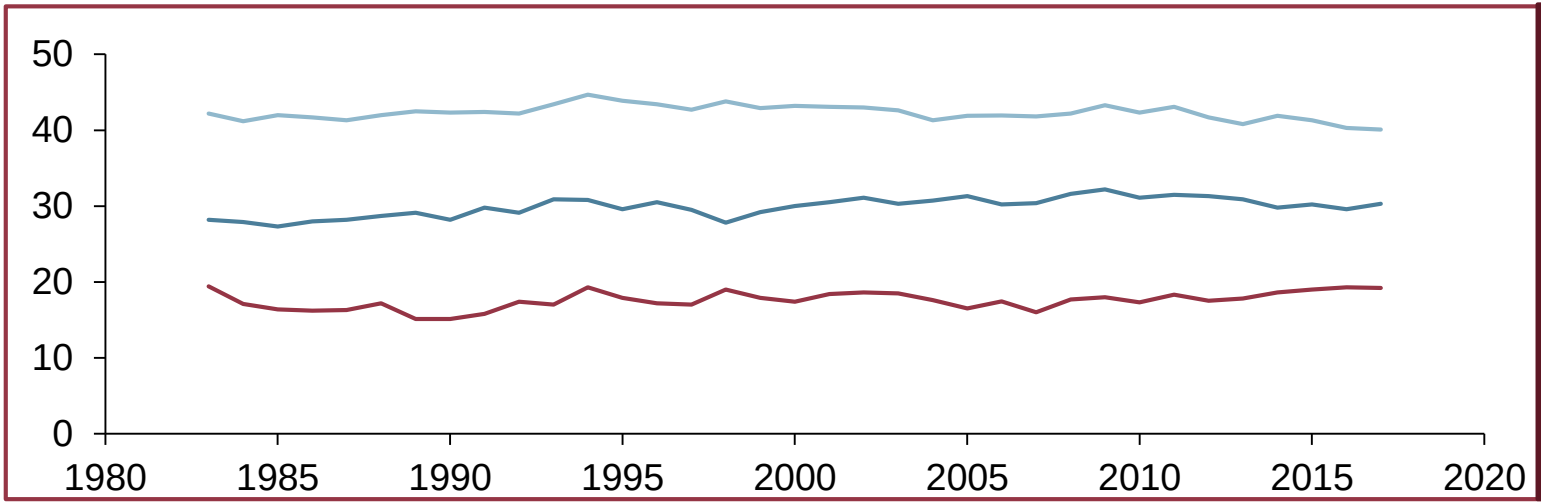
Though private sector union membership has declined precipitously, public sector union membership is stable

Public Sector Employment by Subsector, 1983-2017 (in Millions)



Local government (**which includes teachers**) is the largest subsector, with nearly 10.2M employees in 2017

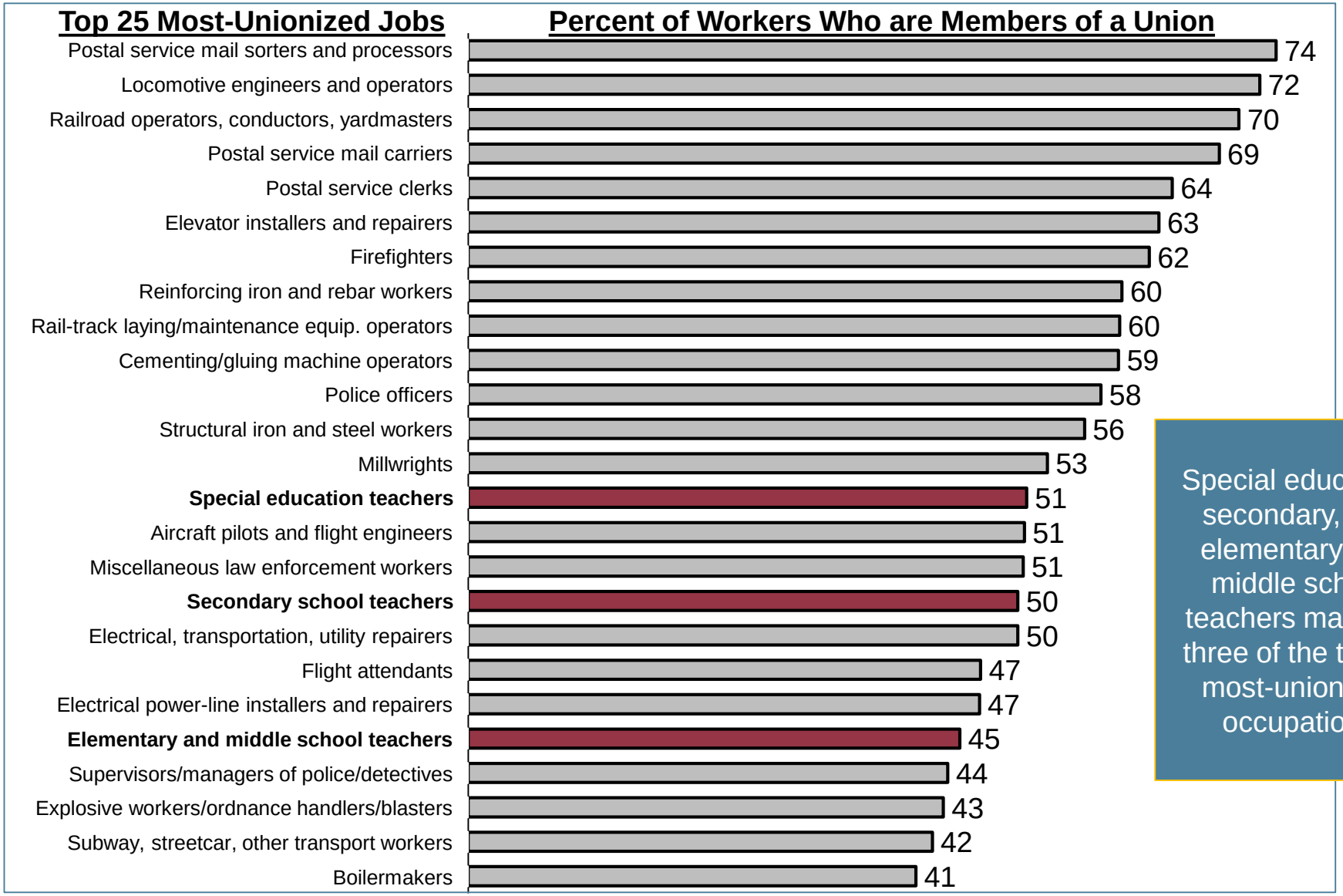
Public Sector Union Membership Rates by Subsector, 1983-2017 (in percent)



Union membership in all subsectors has remained stable, with local government having the highest rate at approximately 40%

Source: Bureau of Labor Current Population Survey via unionstats.com

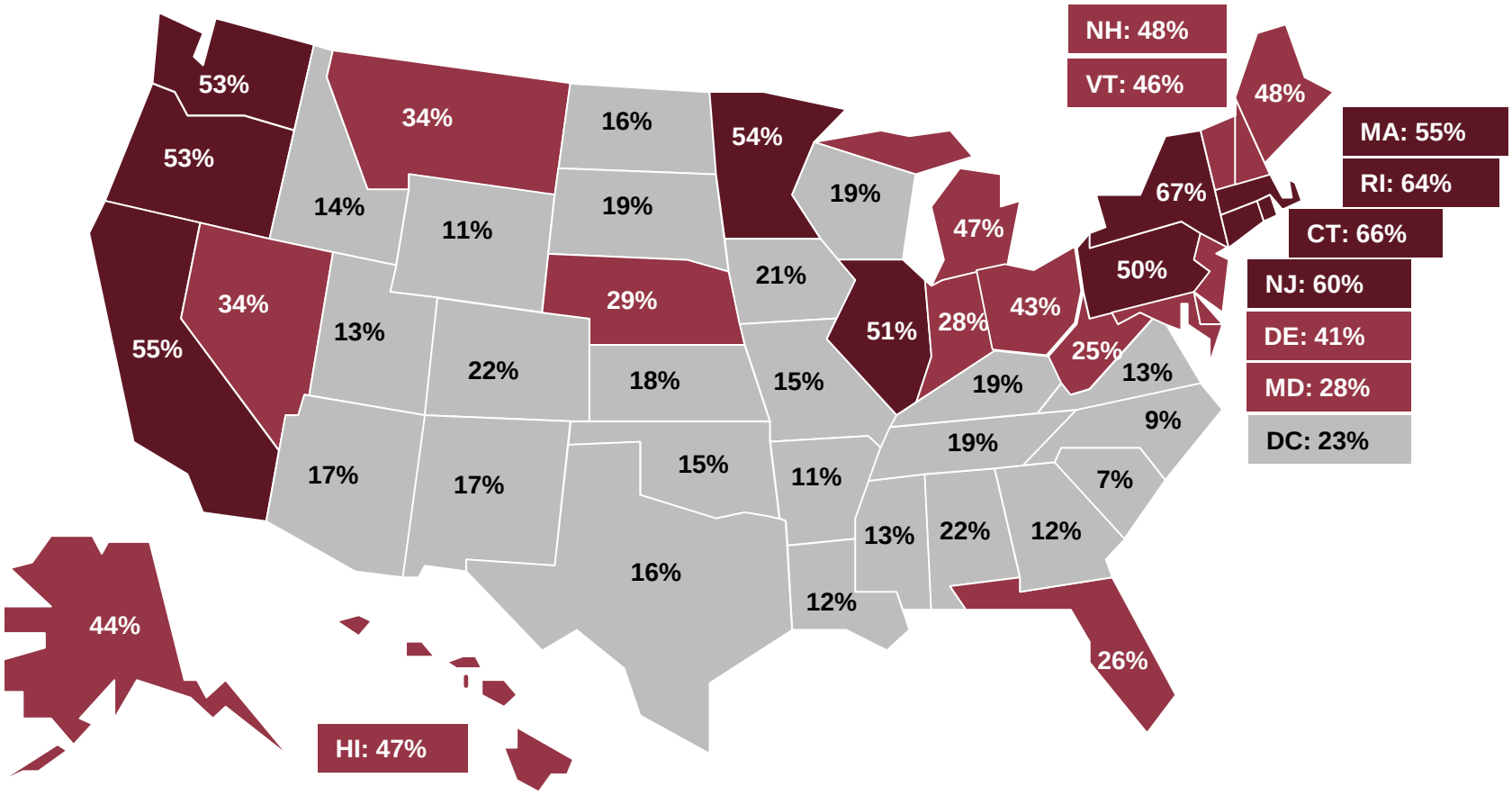
Public sector occupations — including teaching — are among the top 25 most-unionized occupations



Special education, secondary, and elementary and middle school teachers make up three of the top 25 most-unionized occupations

Source: Bureau of Labor Current Population Survey via unionstats.com

In 26 states, more than one-quarter of public sector employees are in a union; in 11 states, more than half are



Source: Bureau of Labor Current Population Survey via unionstats.com

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There are four key differences between public and private sector unions that help explain their differing histories

	Factor	Explanation
1	The dynamics of employment	• In the private sector, firms open and close, giving employees at newly created firms the opportunity to decide whether or not to unionize • Public entities are more consistent, meaning where unions are present they tend to continue to exist
2	The nature of the goods and services	• Unlike most goods and services in the public sector, those created in the private sector are subject to much more competition in the national and global markets
3	The role that unions can play	• In the private sector, the union and firm management are in opposition • This tension doesn't exist in the public sector, as unions are often able to influence the other side of the negotiating table by working to elect school board members, who then make decisions on collective bargaining issues
4	The incentives that employers face	• Private sector market dynamics mean there is often a tradeoff between higher wages and job security: If wages increase, costs rise, and firms may need to lay off workers to save money • This tradeoff between higher wages and job security does not exist to the same extent in the public sector

Public sector unions are more controversial than private sector unions, as increases in pay and benefits won by public sector union negotiations are paid for by public tax dollars

Source: J. Hannaway and A. Rotherham, eds., *Collective Bargaining in Education*, chapter 2, pp. 35-37

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The two largest teachers unions have existed for 100+ years, but didn't gain the right to collectively bargain until the 1960s

American Federation of Teachers	National Education Association
• Founded in **1916** in Chicago • Founding AFT teachers **wanted to organize a union outside of the NEA** that excluded school administrators from membership • The AFT **was more politically active than the NEA** • The AFT **filed amicus briefs for the plaintiffs in the desegregation cases** in the 1950s and revoked the charters of its few remaining segregated Southern locals • AFT strikes in the early 1960s **are credited with pressuring President Kennedy** to extend collective bargaining rights to federal employees, and to the enactment of state collective bargaining laws for teachers	• Founded in **1857** in Philadelphia • Originally called the **National Teachers Association** • Changed **name to NEA in 1870** when it merged with administrator and higher education organizations • For the first 100 years, the NEA was controlled by (mostly male) administrators, and **worked to further the interests of the education profession as a whole** • In **the 1960s**, after the first passage of a collective bargaining law for public employees, the NEA **adopted union activities and the right to strike, and spun administrators out of the organization**

Prior to the 1960s, teachers' salaries and benefits were determined by a process called "meet and confer" between management and various groups of teachers — high school science teachers, middle school math teachers, 2nd grade teachers, etc.

Sources: *Blackboard Unions*; Shanker: "Reflections on 40 Years in the Profession"; *Collective Bargaining in Education*

Teachers unions were key activists during the civil rights movement

American Federation of Teachers		National Education Association
	1920s	✗ NEA/ATA accredits black schools under “separate but equal” doctrine
AFT files amicus briefs for plaintiffs in *Brown v. Board of Education* ✓	1940s-50s	✓ NEA refuses to hold annual assemblies in cities that discriminate against black delegates
AFT revokes charters of its few remaining segregated Southern local chapters ✓		
AFT supports the 1963 March on Washington ✓	1960s	✓ NEA merges with the American Teachers Association, a national organization of African-American educators
AFT supports voter registration drives ✓		✓ NEA leaders and staff launch a voter registration campaign for black educators under the slogan, “Fit to Teach, Fit to Vote”
After white teachers are fired in the largely black neighborhood of Ocean Hill-Brownsville, AFT President Albert Shanker demands their reinstatement ✗		✓ NEA sponsors a major conference on bilingual education and the needs of Spanish-speaking students leading to the 1968 Bilingual Education Act
		✓ NEA establishes the Human and Civil Rights Division

✓ Teachers unions supported civil rights efforts

✗ Teachers unions hindered civil rights efforts

The AFT and NEA continue to provide substantial financial support to civil rights organizations today

In 2017, the **AFT** gave at least $1.1 million to civil rights organizations

2017 Sample Recipients	
NAACP	$90K
Congressional Black Caucus Foundation	$80K
A. Philip Randolph Educational Fund	$60K
National Alliance of Black School Educators	$25K

In 2017, the **NEA** gave at least $1.5 million to civil rights organizations

2017 Sample Recipients	
NAACP	$75K
Congressional Black Caucus Foundation	$50K
National Urban League	$25K
National Coalition on Black Civic Participation	$25K

Source: Department of Labor LM-2s

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Teachers unions sought collective bargaining power to address grievances, mirroring the success of private sector unions

Three main reasons teachers unions organized for collective bargaining

1	**Private sector labor success**	By the 1950s, the **private sector labor movement had become a powerhouse**, winning sizable wage increases through collective bargaining
2	**Low pay**	**Teachers were making less than factory workers**. Since the vast majority of teachers had college degrees, the income disparity was particularly striking
3	**Poor working conditions**	Teachers were **frustrated with poor working conditions** such as: • **Non-educational responsibilities** such as removing snow on school grounds • Elementary teachers often had **no breaks for lunch** and were required to monitor the cafeteria and bathrooms • Many were **forced to punch a time clock**, and when they missed work due to being sick, they **had to bring a doctor's note** • Female teachers were pressured to leave the classroom as soon as they became pregnant

Sources: *Blackboard Unions*; Freeman, "What Do Unions Do"

Several key events paved the way for widespread teachers union collective bargaining

1959
- Wisconsin legislators adopt the **nation's first public employee collective bargaining law**

1960
- The New York Teachers Guild — made up mostly of elementary teachers — merges with secondary teachers to **form the United Federation of Teachers (UFT),** an AFT affiliate. The UFT adopts the principle that pay differentials will be based on seniority and levels of teacher education, not grade level taught
- UFT **organizes its first major strike** that year

1961
- The **UFT is chosen as the collective bargaining organization** for all New York City teachers

1962
- **UFT organizes a strike with 20,000 teachers.** The strike shuts down more than 25 of the city's public schools; *Time* labels it the "biggest strike by public servants in U.S. history"
- President Kennedy issues Executive Order 10988 that recognizes the **right of federal employees to bargain collectively,** and the enactment of state collective bargaining laws for teachers

1965
- Congress passes the **Elementary and Secondary Education Act (ESEA)**

ESEA provided significant federal funds for low-income students. At the same time, school funding lawsuits in the 1970s caused a rise in the proportion of state-level education spending. These developments led teachers to go beyond collectively bargaining with local school boards to lobby for state and federal funds and to shape policy more broadly.

The passage of the Elementary and Secondary Education Act in 1965 expanded the scope of teachers unions' influence

1. **Teachers unions started lobbying** for state and federal funds and to shape state and federal education policies

2. Teachers unions began **collectively bargaining on a larger set of issues:**

Collective bargaining topics prior to ESEA	Collective bargaining topics after ESEA
✓ Salaries and wages ✓ Benefits ✓ Hours ✓ Working conditions	✓ Salaries and wages ✓ Benefits ✓ Hours ✓ Working conditions ✓ **Student discipline** ✓ **Class size** ✓ **Layoffs and dismissal** ✓ **Teacher evaluation**

Source: *Collective Bargaining in Education*, Chapter 1

As teachers unions gained collective bargaining rights in the 1960s and 1970s, teachers' strikes became common

Sampling of prominent teachers union strikes

- **1967**
  - New York City's UFT **strikes for 14 days mostly over nonwage issues**: tougher school discipline policy, reduced class size, and a call for expansion of the More Effective Schools program for disadvantaged schools
- **1968**
  - More than 54,000 UFT teachers strike when **the black school board of Ocean Hill-Brownsville**, a Brooklyn district, dismisses as many as 13 teachers and administrators who are predominantly white and Jewish. **The strike lasts for 36 days**
  - The Florida Education Association **leads the first statewide strike** in the nation — more than 40 percent of the state's teachers strike over salaries and funding for classrooms
- **1969**
  - **Chicago teachers go on strike for the first time** in the city's history. The strike is resolved after one day when teachers agree to an increase in salary of $100 a month
- **1970**
  - Although it is **illegal in the state at the time, the Minneapolis Federation of Teachers** strikes over low salaries
- **1971**
  - The **second strike by Chicago teachers** lasts for four days before agreeing to an 8 percent pay raise, making them one of the best paid in the country at the time

Between **1960 and 1974 there were more than 1,000 teacher strikes** involving more than 823,000 teachers. **Strikes began to taper off in the 1980s/90s** as the economy became more stable, inflation went down, and teachers unions became well accepted by school districts as the representatives of teachers.

Sources: *Blackboard Unions*; *Encyclopedia of U.S. Labor and Working-class History*, volume 1

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Teachers unions experienced early wins from collective bargaining

Supporters of teachers unions cite an array of positive developments that grew out of collective bargaining, including:

- ✓ **Increased teacher salaries and fringe benefits**, making it easier to attract higher quality teachers into the profession
- ✓ **Ensuring that teachers had less responsibility for non-educational tasks** such as removing snow on school grounds and monitoring the cafeteria and bathrooms, giving teachers more time to focus on instruction
- ✓ **Professionalizing the work environment**, for example by allowing teachers to miss work for illness without a doctor's note
- ✓ Enabling teachers to enact **tougher student discipline policies**
- ✓ **Stopping discriminatory firing practices** for pregnant teachers
- ✓ **Creating a uniform salary schedule**, ending inequities in pay based on factors like race and gender

Sources: Blackboard Unions; aft.org; nea.org

Research on the effects of collective bargaining on student outcomes dates back several decades, and is mixed

Study	Year	Key Findings
Eberts & Stone	1987	• Fourth graders in unionized schools demonstrate **greater improvements in math scores** than students in nonunionized schools, particularly for middle-range students. However, the **highest- and lowest-achieving students fare worse at unionized schools**
Hoxby	1996	• Teachers unions succeed in raising school budgets and school inputs • Unionized school districts have **higher dropout rates** than nonunionized districts
Steelman, Powell, & Carini	2000	• Positive linkages between **unionization and state SAT and ACT scores** • Greater unionization leads to **higher eighth-grade NAEP scores**

Lindy	2011	• Mandatory collective bargaining laws for public schools lead to
		  • An **increase in SAT scores**
		  • A **decrease in graduation rates**

Lovenheim & Willen	2017	• Collective bargaining laws have **no effect on students' overall educational attainment**
		• However, compared to students who live in states without mandatory collective bargaining, students who spend their K-12 years in a state with mandatory collective bargaining laws:
		  • **Earn $800 less** per year and **work 30 minutes less** per week as adults;
		  • Are 0.9 percentage points **less likely to be employed**; and
		  • Are 0.8 percentage points **less likely to be in the labor force**

As teachers unions gained more visibility, they also became objects of controversy and criticism

Union critics expressed concern that:

- Teachers unions were **"rent-seeking"** organizations, which persistently lobbied the government for special privileges
- Teachers unions exerted **too much political influence** over the public officials they lobbied and with whom they negotiated contracts
- **Teacher strikes harmed children**, who lost instructional time
- Collective bargaining provisions made it time-consuming and expensive to **dismiss incompetent teachers** and hamstrung administrators' **flexible staffing** arrangements
- **Unions prevented merit pay** policies and reduced attractiveness of profession
- Teachers unions **opposed efforts to empower parents** through school choice
- Teachers unions insulated teachers from accountability for **student achievement**
- Teachers unions advocated for "last in, first out" policies that **preference senior teachers over newer teachers regardless of quality**

Then, in 1983, *A Nation at Risk* leveled a broad critique on public education and a thinly veiled shot at teachers unions

- Sponsored by the Reagan Administration, the seminal report warned of a "**rising tide of mediocrity**" in American education
- The report called for elected officials, educators, parents, and students to reform a public school system it described as "**in urgent need of improvement**"

Under pressure, teachers unions changed anti-reform stance: AFT called for Second Revolution & NEA adopted New Unionism

Opposition to teachers unions and the ascendancy of conservative politicians in the 1970s and ’80s caused teachers unions to reconsider their approach

Second Revolution

- Led by Albert Shanker, **the AFT** embraced the standards and accountability movement, introduction of peer review for teacher accountability, extra pay for board-certified teachers, public school choice, and charter schools
- In 1985, Shanker called for a “**second revolution**” of teacher unionism to step beyond collective bargaining to improve public education
- In Shanker’s vision, policies like a rigorous national test for teachers, peer review, and career ladders were **not just defensive moves against critics** of public school teachers, they were **prerequisites to the professionalization of teaching**

New Unionism

- The NEA **initially avoided all reform** and warned its members away from it
- The NEA’s stance began to change in the late ’90s when in 1997, then-President Bob Chase called for re-creating the NEA as a “champion of quality teaching and quality education” — he named his approach **“New Unionism”**
- Chase described New Unionism as “being **as strong an advocate for the professional side of the education equation** as we have been for the economic and social well-being of our membership, the other side of the equation”

Source: Kahlenberg: “The Agenda That Saved Public Education”

Reauthorizations of the Elementary and Secondary Education Act (ESEA) scrambled unions' alliances on the political left

The Improving America's Schools Act (IASA)	**1994-2001**	• Under President Clinton, IASA **enacts the most significant program changes since ESEA** was first passed in 1965 • Increases **federal funding to poor schools** • Requires **states to set statewide academic standards** for its Title I students that are the same as the standards that exist for other students • Authorizes $15 million for aid to districts — via states — that want to **establish charter schools**
Unions' response		• **Albert Shanker**, then president of the AFT, says **IASA sets unrealistic expectations** and objects to provisions that place **all the sanctions on the adults and none on students**
No Child Left Behind (NCLB)	**2002-2015**	• Under President Bush, NCLB expands the federal role in education, requiring annual testing and a sequence of consequences for schools that fail to improve
Unions' response		• Teachers unions **oppose NCLB although the bill passes Congress by wide margins, with more Democratic votes** than Republican ones

Source: U.S. Department of Education

The Obama Administration's reforms were particularly unpopular among teachers unions

Race to the Top (RTT)	**2009**	• Funded by the American Recovery and Reinvestment Act, the U.S. Department of Education creates RTT, **a competitive grant created to spur innovation in schools** • States are awarded points for satisfying certain policies such as **performance-based teacher evaluation systems and adopting common standards**
Unions' response		• In order to win funding, **unions are willing to engage in their states' application process**, but quickly become weary of the push for reform
No Child Left Behind Waivers	**2011-2015**	• While Congress struggles to reauthorize NCLB, the Obama Administration grants waivers to **states that ease some of the consequences outlined in NCLB** but maintain testing requirements and incentivize rigorous teacher evaluations
Unions' response		• Teachers unions **largely oppose the waivers process and their continued emphasis on testing and accountability**

Infighting between the Obama Administration and teachers unions came to a head when in 2014, **the NEA called for Secretary of Education Arne Duncan's resignation**.

Source: U.S. Department of Education

Unions walked a fine line with Obama in office and $5B in RTT funding in play, but even lukewarm support was fleeting

8 out of 12 States



that won Phase 1 or Phase 2 Race to the Top (RTTT) grants had more than **70% of local teachers unions** sign onto their applications.

Randi Weingarten
July 2009

> "Will we agree with everything? I doubt it. But hopefully **we will agree that teacher evaluations must be improved the right way** … teachers are essential to education reform and that their voices need to be heard."

One Year Later

Randi Weingarten
July 2010

> "**The Education Department is sending a message that is completely opposite to its earlier calls** for states to engage all community members, including teachers, in the effort to improve schools."

Sources: AFT, 2009; ABC News, 2010

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The 2015 passage of ESSA created odd alliances across various issues

Stakeholder Groups' Support of Components of ESSA



Sources: Author analysis based on nea.org; aft.org; edweek.org; civilrights.org; nytimes.com

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Support | Neutral/ Mixed | Oppose

Unions often agreed with Republicans and disagreed with Democrats on key issues in ESSA

The various components of ESSA sparked heated debate among stakeholder groups. As these issues are complicated and nuanced, the table below offers greater insight into the debate on two of ESSA's components:

Component	Explanation of stakeholder groups' positions
Teachers Eliminates waiver requirement of teacher evaluation through student outcomes; eliminates NCLB's high-quality teacher requirement	• The AFT and NEA aligned closely with the Tea Party and congressional Republicans who **lauded the elimination of waiver requirements that teacher evaluation be based significantly on student outcomes**. These requirements were highly unpopular among teachers and the Tea Party and Republicans saw them as overly prescriptive. • The civil rights community and congressional Democrats were more mixed on this component, **expressing concern that eliminating this requirement could lessen accountability on teachers to raise the scores of all students.**
Testing ESSA requires that states test at least 95% of students in reading and math in grades 3-8 and once in high school and report data by subgroup. However, ESSA gives states greater flexibility over the types of tests used and their frequency.	• The AFT and NEA have long **decried the so-called high-stakes testing culture established under NCLB**. While AFT and NEA leadership applauded the reduction of testing in ESSA compared to NCLB and the waivers, both **denounced punishments for schools that do not test at least 95% of students.** The AFT expressed concern about testing requirements related to English language learners and special education students, and the NEA claimed that ESSA requirements preserve the "test and punish" culture. • Similarly, congressional Republicans saw testing as overly prescriptive, and began initial negotiations by **questioning whether or not to keep annual testing at all.** • Meanwhile, congressional Democrats and the civil rights community **fought to keep annual testing provisions to ensure a focus on all students.**

Sources: nea.org; aft.org; edweek.org; civilrights.org

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The AFT and NEA are complex organizations, but the basis is a local-state-national affiliate structure

The AFT and NEA's internal decision-making processes, opportunities for member input, and organizational structures differ from one another. However, they both have local, state, and national branches that carry out different functions.

Dues money flows both ways between local, state, and national branches, while regulation and oversight tends to flow from the top down.

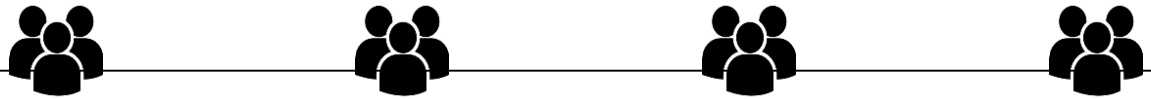




At each level, union members elect a representative body, which then elects executive officers.

National Headquarters

The national headquarters campaigns at a national level on federal legislation and other issues affecting education broadly.



State Affiliates

State affiliates often work on state-level issues related to education, including lobbying legislators for resources or filing legal actions to protect the rights of teachers and school employees.



Local Chapters

Local branches or chapters represent members from a particular district or geography. They have their own governing bodies and deal with issues relevant to their constituents, including local bargaining agreements.



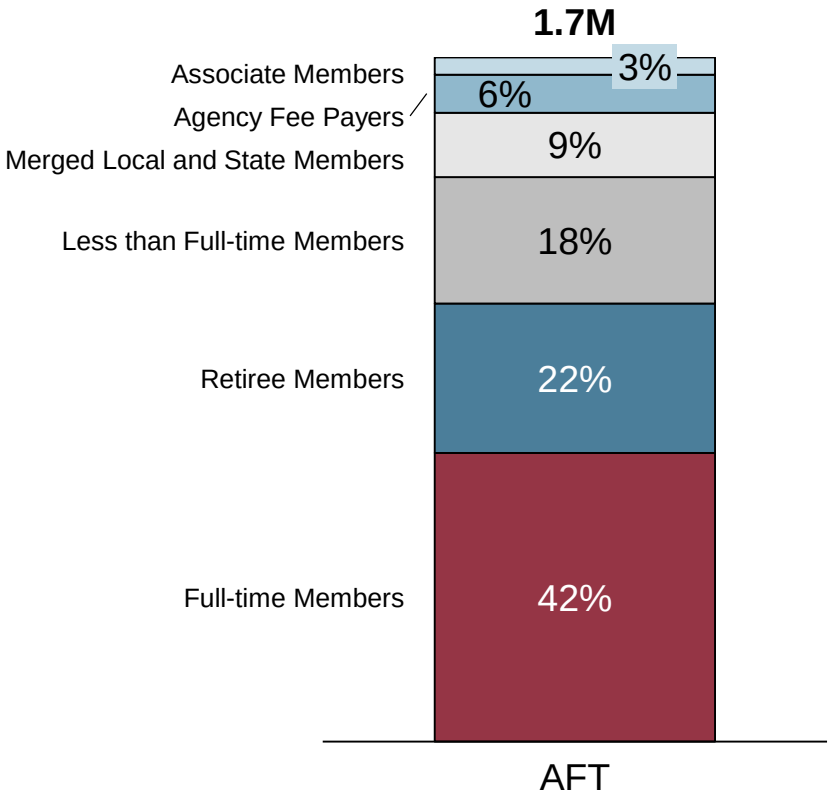
Sources: aft.org; nea.org

BELLWETHER EDUCATION PARTNERS

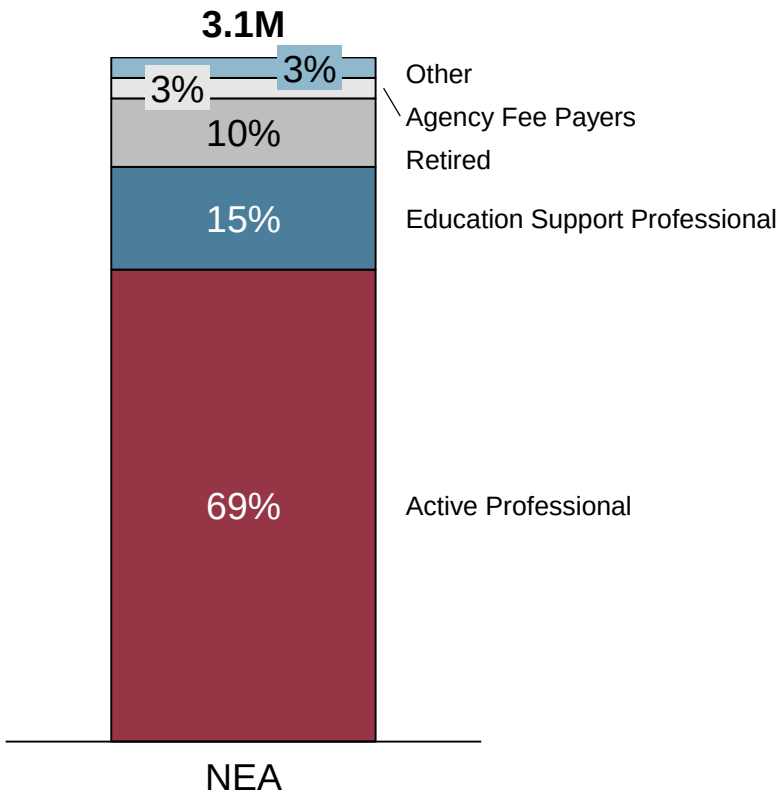
The AFT and NEA remain the nation's largest teachers unions, representing more than 4M professionals

Both the AFT and NEA represent professions other than K-12 classroom teachers, including education support personnel and paraprofessionals and higher education faculty and staff. The AFT also represents professions in other fields, such as health care.

AFT Membership by Category, 2017



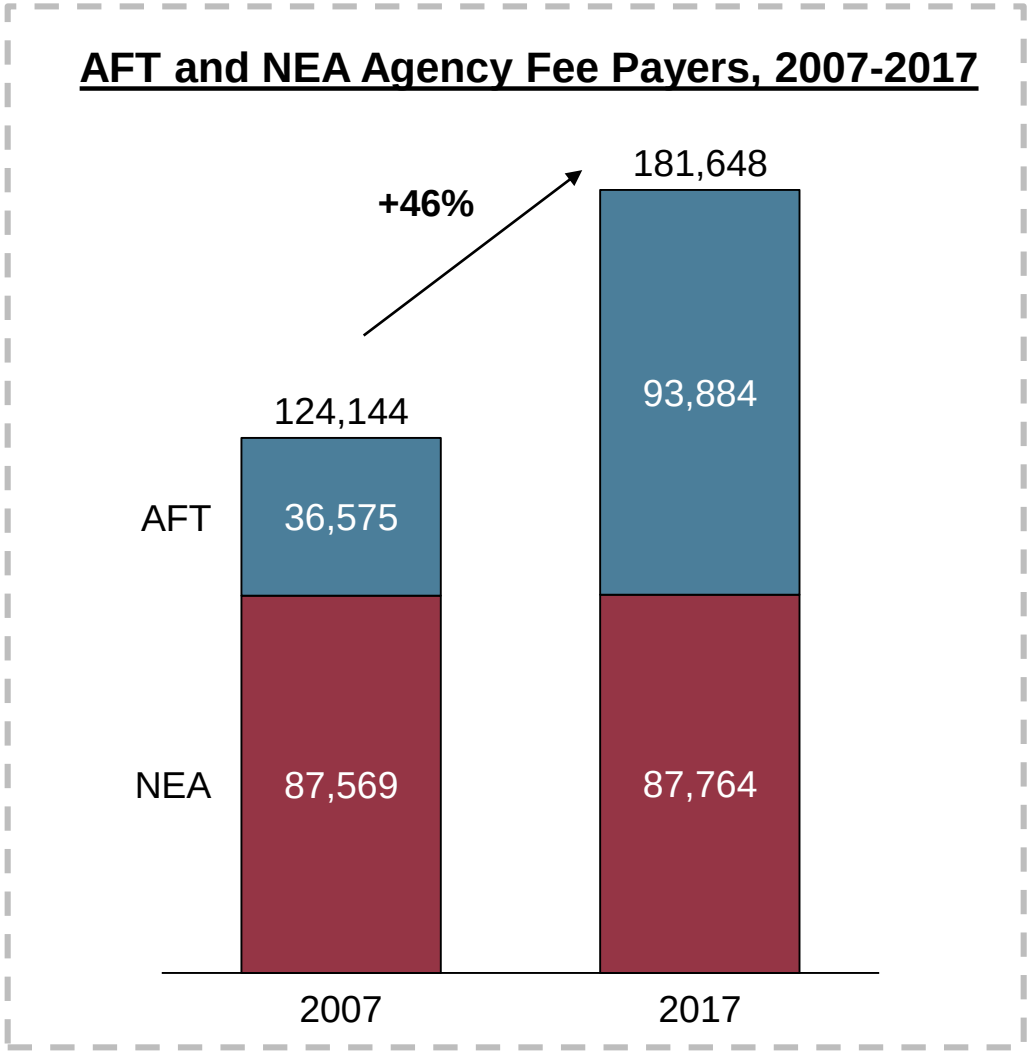
NEA Membership by Category, 2017



Source: Department of Labor LM-2s

Note: The AFT and NEA both count as members approximately 650,000 individuals who belong to merged AFT/NEA chapters. As a result, the AFT/NEA combined membership is 650,000 less than the combined totals of their individual rosters, or approximately 4.1M.

A small but increasing number of professionals are opting out of membership in both the AFT and NEA



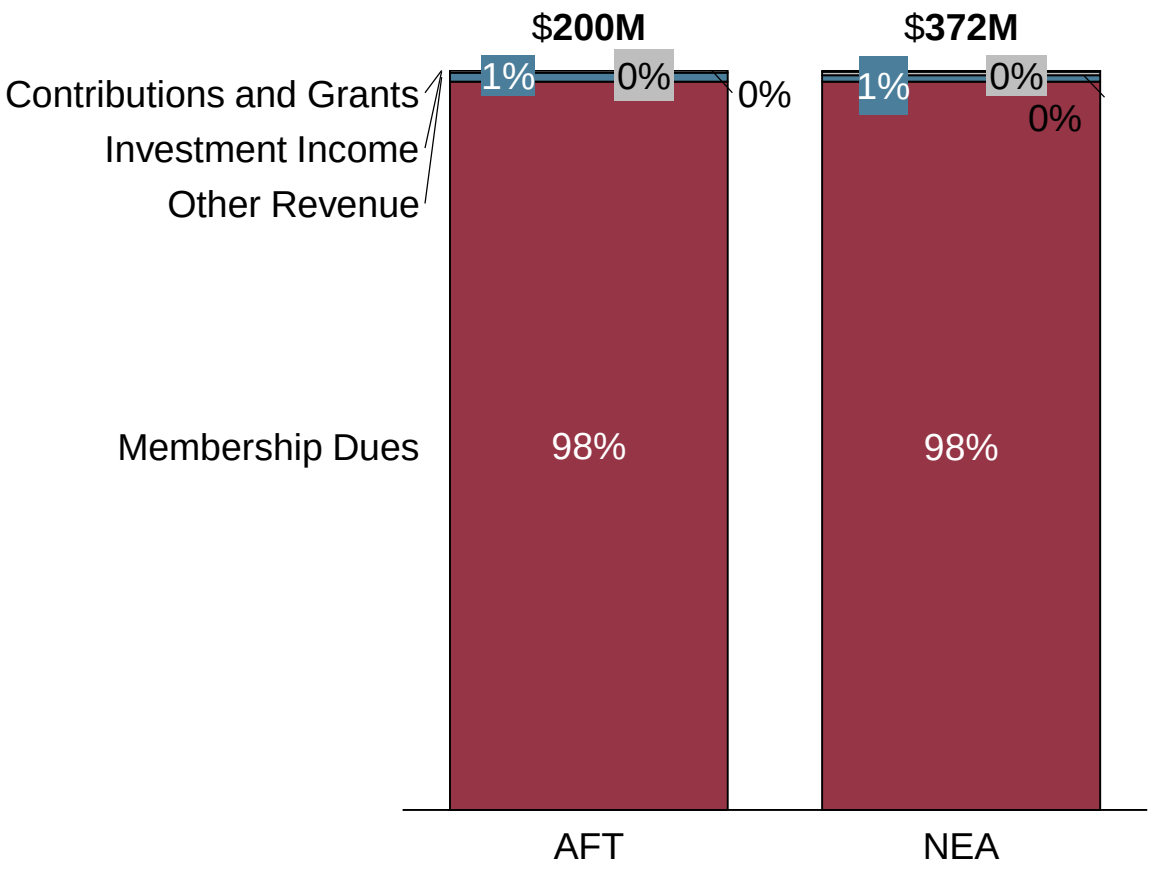
- Between 2007 and 2017, the number of agency fee payers represented by the AFT and NEA **increased 46%,** driven primarily by increasing numbers in the AFT
- **6% of the employees that the AFT** represents and **3% of the employees that the NEA** represents are agency fee payers

Source: Department of Labor LM-2s

BELLWETHER EDUCATION PARTNERS

Membership dues are the primary source of teachers unions' revenue

AFT and NEA Revenue Sources (2015)



- The AFT reported $0 in revenue from contributions and grants, while the NEA reported approximately $730,000
- The AFT reported $2.4M in other revenue and the NEA reported $3.3M

Additional details on the sources of this revenue are not publicly available

Source: 2016 form 990 via guidestar.com

BELLWETHER EDUCATION PARTNERS

Teachers unions can collectively bargain on a variety of issues falling into three main categories

	Category	Issue	Number of states where unions can bargain on this issue
1	Wages and benefits	Wages	40
		Insurance or fringe benefits	29
		Pension/retirement benefits	15
2	Teaching load	Hours	34
		Class load or size	17
		Extracurricular activities	14
		Length of preparation periods	14
		Length of the teacher school year	13
3	Conditions of employment and termination	Terms and conditions of employment	37
		Grievance procedures	36
		Leave	25
		Transfers and reassignment	19
		Layoffs	18
		Dismissal	14
		Evaluation process or instruments	14
		Management rights	14

Source: NCTQ

The issues on which unions can bargain vary significantly from state to state

	Wisconsin	Iowa	California
Wages	✓	✓	✓
Insurance or fringe benefits	✓	✗	✓
Pension/retirement benefits	✓	✗	–
Hours	✗	✓	✓
Class load or size	✗	✓	✓
Extracurricular activities	✗	✓	–
Length of preparation periods	✗	✓	–
Length of the teacher school year	✗	✓	–
Terms and conditions of employment	✗	✓	✓
Grievance procedures	✗	✓	✓
Leave	✗	✓	✓
Transfers and reassignment	✗	✗	✓
Layoffs	✗	✗	✓
Dismissal	✗	✗	–
Evaluation process or instruments	✗	✗	✓
Management rights	✗	✗	–

✓ Mandatory or permissive

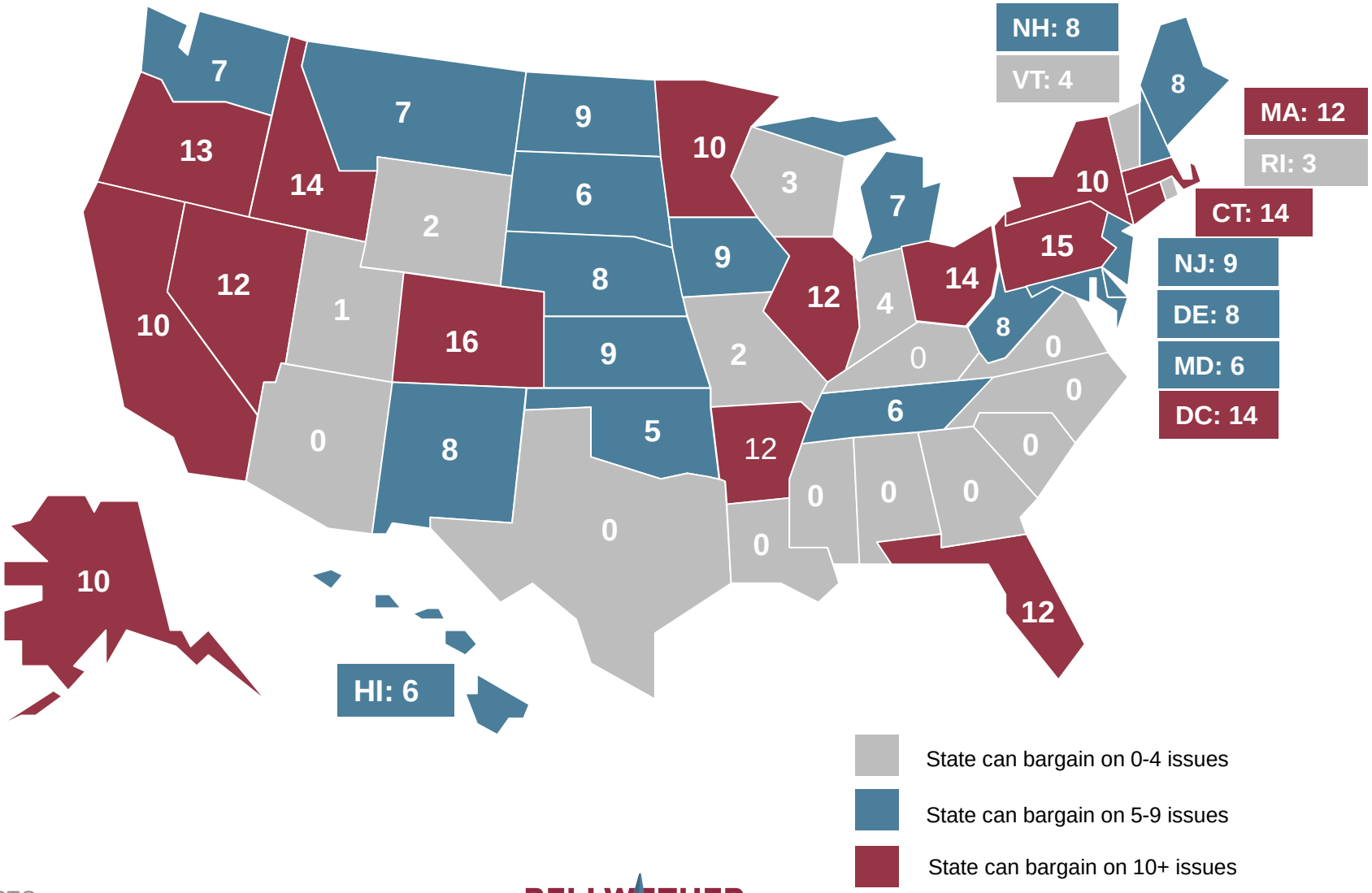
✗ Illegal

– Issue not addressed in state law

Many states allow bargaining for wages and hours, but are more restrictive on issues such as management rights, layoffs, and evaluation processes

Source: NCTQ

In 15 states and Washington, D.C., unions can bargain on 10 or more issues

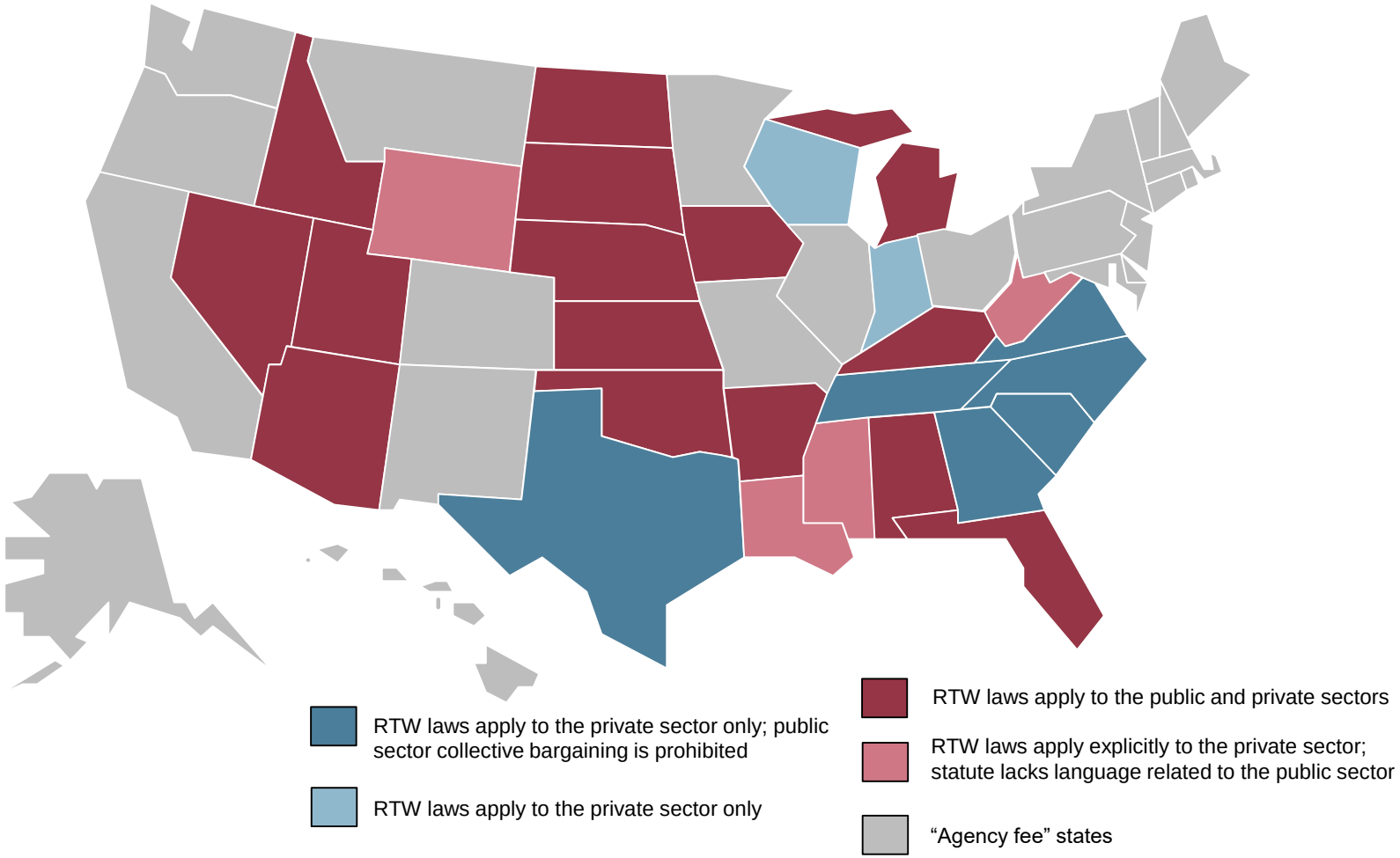


Source: NCTQ

BELLWETHER EDUCATION PARTNERS

27 states have passed right-to-work laws, though in 8 states these laws apply only to private sector unions

When states pass right-to-work laws, union membership rates are typically negatively affected



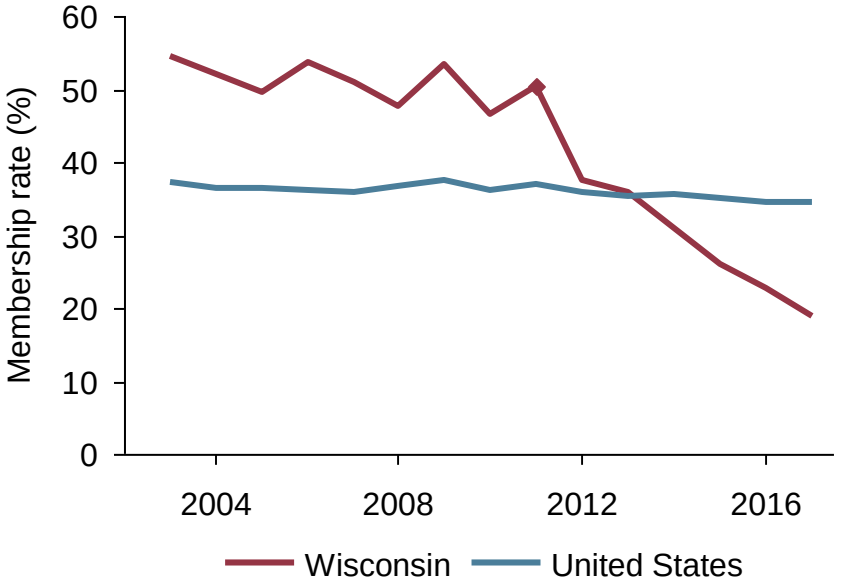
Source: Center for Economic and Policy Research Issue Brief, November 2014
Note: Missouri passed a RTW law in 2017; however, following a referendum it has not yet gone into effect

In Wisconsin, hotly contested restrictions on collective bargaining preceded drastic declines in public sector unions

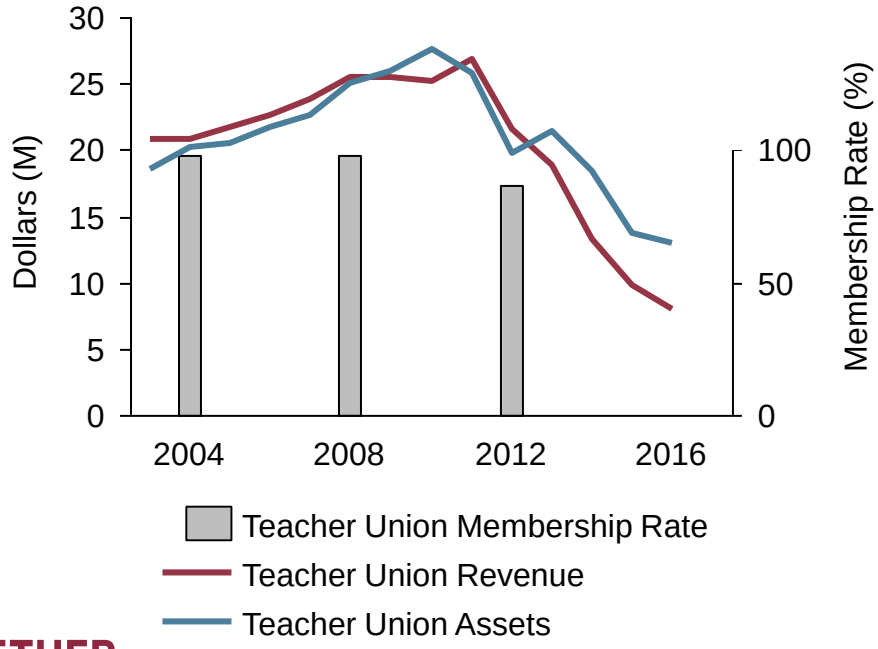
In 2011, Wisconsin passed Act 10, which restricts collective bargaining to base wages, requires annual recertification for bargaining unit representation, and requires that 51% of *all employees* vote for recertification. The law was challenged in court but upheld by the State Supreme Court. Scott Walker survived a recall election in 2012.

In 2015, Wisconsin passed right-to-work legislation, which prohibits mandatory agency fees in the *private sector*. It was challenged in state and federal court, but upheld.

Public Sector Union Membership Rates 2003-2017



Teachers union membership rates, revenues, and assets (2003-2017)

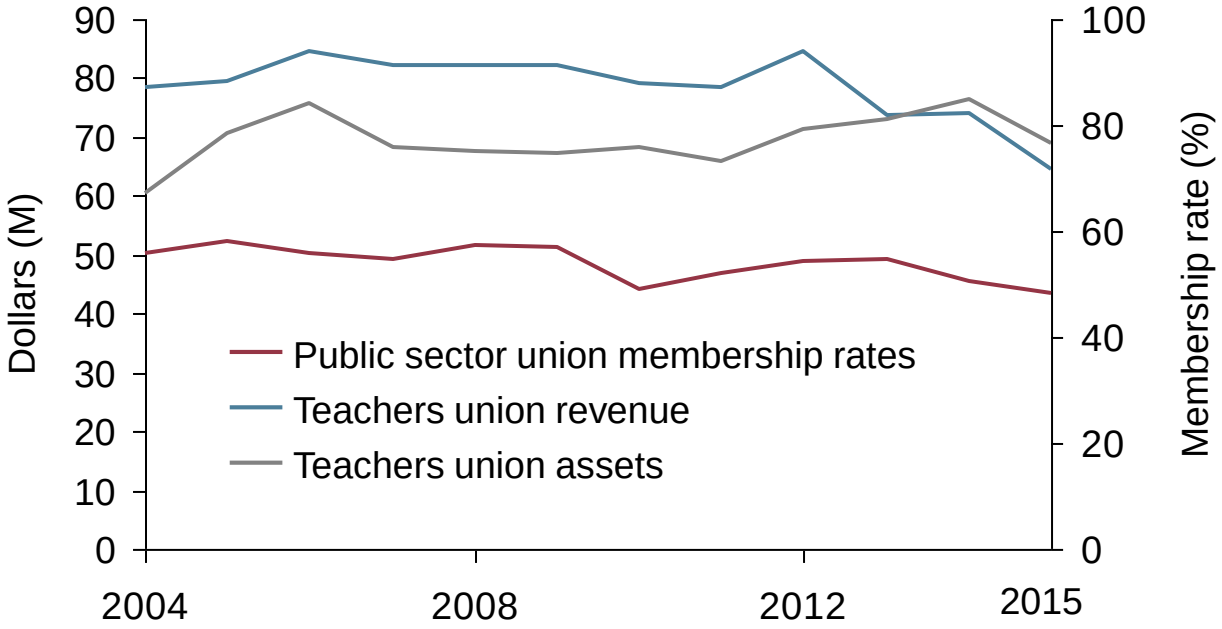


Sources: Bureau of Labor Current Population Survey via unionstats.com; Ballotpedia.org

BELLWETHER EDUCATION PARTNERS

In Michigan, right-to-work legislation was followed by less pronounced, though still declining, trends in union membership

In 2012, Michigan passed a right-to-work law that prohibits mandatory agency fees for most workers. The law does not apply to public safety personnel (police officers, firefighters, and state troopers).



Since 2012 …

Public union membership rates have declined 11%

Teachers union revenue has declined 18%

Teachers union assets have declined 3%

Wisconsin and Michigan illustrate that the *Janus v. AFSCME* decision is likely to affect states differently

Sources: Bureau of Labor Current Population Survey via unionstats.com; Ballotpedia.org

BELLWETHER EDUCATION PARTNERS

In addition to collective bargaining, national teachers unions' funds support a variety of other causes and organizations

	Representational Activities (Collective Bargaining)	Contributions, Gifts, and Grants	Political Activities and Lobbying
What these funds support	Entities and individuals associated with collective bargaining negotiation and enforcement	Gifts to charitable organizations, contributions to scholarship funds, etc. The NEA also places disbursements to its affiliates in this category	Entities and individuals associated with politics
2017 sample recipients	Funds sent to affiliates and regional offices; transportation, lodging, and other travel/meeting funds	American Constitution Society; Center for American Progress; Citizens for Tax Justice; National Immigration Law Center; Clinton Global Initiative; Rainbow PUSH	Various PACs and ballot initiatives; organizations such as the Feminist Majority Foundation; Facebook; Economic Policy Institute
AFT (2017)	**$75M** (22% of total disbursements)	**$4M** (1% of total disbursements)	**$40M** (12% of total disbursements)
NEA (2017)	**$44M** (11% of total disbursements)	**$98M** (25% of total disbursements)	**$53M** (14% of total disbursements)

Note: Unions report spending in a number of other categories not included in this table, including general overhead, general administration fees, benefits, taxes, loans, and fines
Source: 2017 LM-2s

BELLWETHER EDUCATION PARTNERS

Many of these causes and organizations are outside of the education sector

The AFT and NEA give money to hundreds of organizations, including many in the education sector. However, both also give money to organizations that fight for causes outside education. The tables below offer examples of the types of organizations supported by teachers unions.

AFT

Name	Description	Amount (2017)
Planned Parenthood Votes	A super PAC branch of the nonprofit Planned Parenthood	$350K
NARAL Pro-Choice America	An advocacy organization fighting for access to abortion care, birth control, paid parental leave, and protections from pregnancy discrimination	$25K
BNAI Zion Foundation	A nonprofit organization that identifies and funds capital projects in Israel	$5K
International Labor Rights Forum	A human rights organization that advances dignity and justice for workers in the global economy	$5K

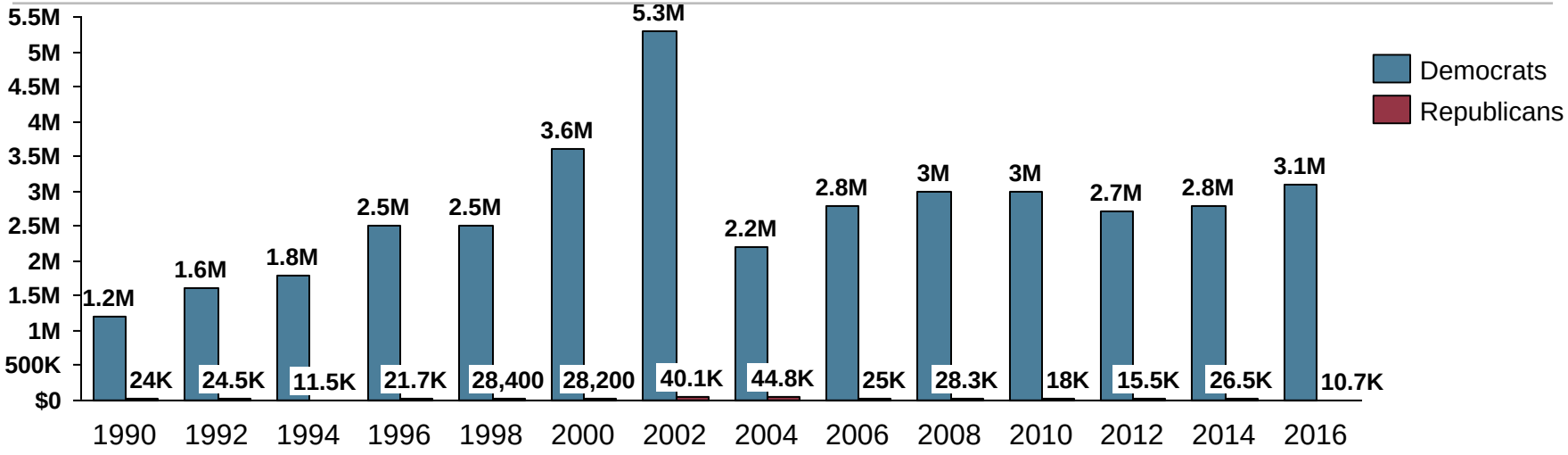
NEA

Name	Description	Amount (2017)
National Immigration Law Center	An advocacy organization dedicated to defending and advancing the rights of immigrants with low income through litigation, policy analysis and advocacy, and strategic communications	$50K
Politico	A political journalism company that covers domestic and international policy and politics	$25K
Emily's List	An advocacy organization working to elect pro-choice Democratic women to office	$10K
National Center for Transgender Equality	A social justice advocacy organization working to win life-saving change for transgender people	$10K

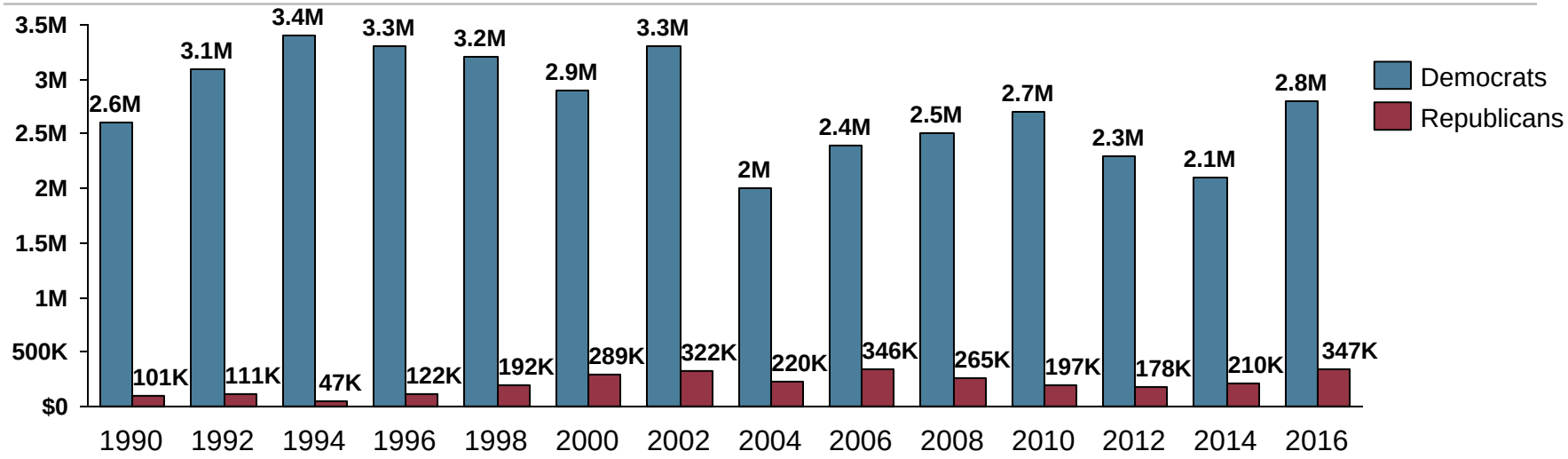
Source: Department of Labor LM-2s

National teachers unions' political spending largely goes to Democratic campaign contributions

American Federation of Teachers, Total Contributions by Party (in US Dollars), 1990-2016



National Education Association, Total Contributions by Party (in US Dollars), 1990-2016

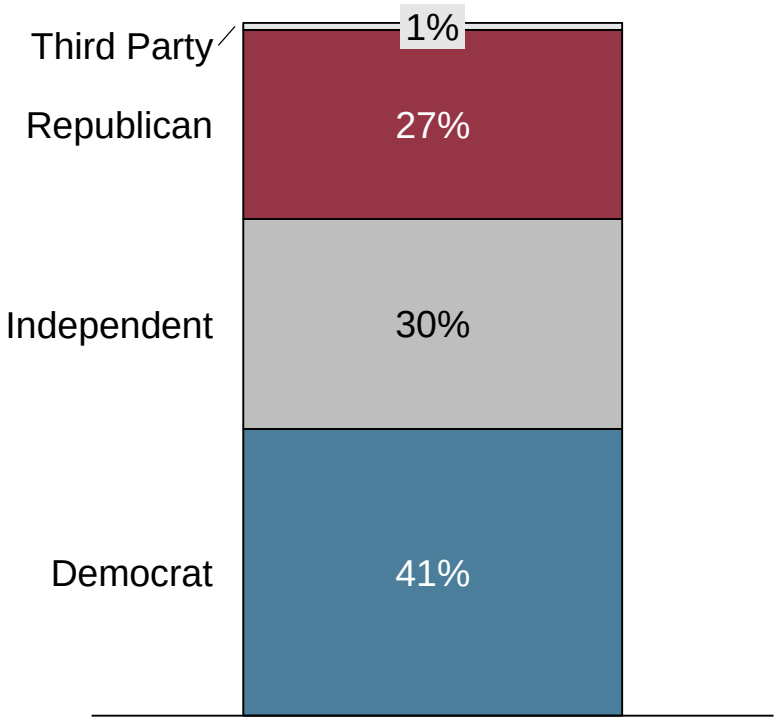


Source: Federal Election Commission and Senate Office of Public Records, via Center for Responsive Politics at opensecrets.org

While teachers unions largely support Democrats, fewer than half of educators identify as Democrats

While not all educators are members of unions, and not all union members are teachers, survey data suggest that unions' political activity is misaligned to teachers' political affiliations

Educators' Party Affiliation



According to survey data:

28% of educators feel that their local teachers union **represents their political views "a lot."**

29% of educators identify as either **"very liberal" or "liberal."**

50% of educators report voting for Hillary Clinton in the 2016 election; **29% for Donald Trump; and 13% for a third party candidate**. 8% did not vote.

Source: Education Week Research Center, Educator Political Perceptions 2017

BELLWETHER EDUCATION PARTNERS

As is common in large and established organizations, more extreme voices often stymie internal calls for union reform

✗ WTU Washington Teachers' Union

In 2010, two years after D.C.'s WTU president George Parker negotiated a groundbreaking contract that included significant performance pay and a new evaluation system, he lost his re-election bid to Nathan Saunders — a critic of Parker's concessions to the Fenty/Rhee administration.

✗ Chicago Teachers Union

In her willingness to initiate and sustain a nine-day teachers' strike in 2012, the first in 25 years, Karen Lewis staked out an extreme position and approach.

✓ aft AFT Connecticut A Union of Professionals

David Cicarella is serving his fourth term as president of the New Haven Federation of Teachers, after embracing teacher evaluations and other reforms in the unions' 2009 contract.

✗ UTLA United Teachers Los Angeles

The 2014 union election pitted incumbent Warren Fletcher against Alex Caputo-Pearl, whose left-leaning faction painted Fletcher as too moderate. Caputo-Pearl won the election in a runoff.

✗ MTA

In 2014, Barbara Madeloni pulled off an upset victory against incumbent Vice President Tim Sullivan. Madeloni campaigned against the positions of Sullivan and outgoing president Paul Toner. Both were reform-minded leaders seeking to have the union focus equally on traditional union issues and professional issues.

✓ Moderate leaders maintain leadership role

✗ Moderate leaders lose leadership role

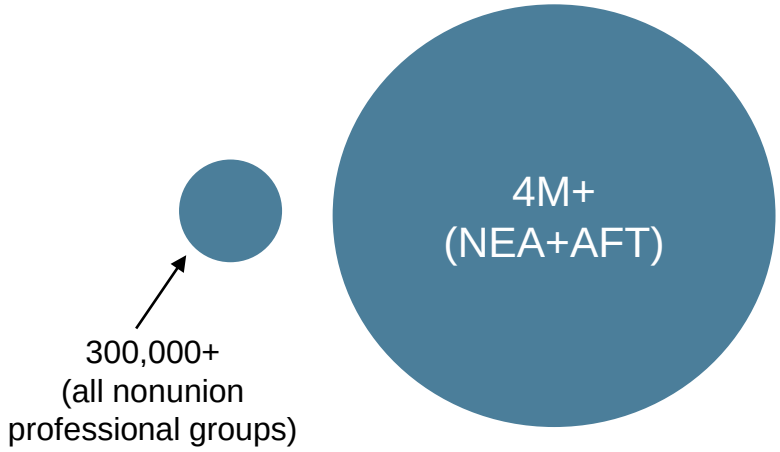
Sources: bostonglobe.com; laschoolreport.com; washingtonpost.com; huffingtonpost.com

New and independent teacher groups have emerged, though their scale pales in comparison to the NEA and AFT

A variety of national and state-level non-union educator groups exist:

- These organizations offer educators an **alternative to traditional unions**
- They provide some of the same benefits as unions, including **access to insurance, legal counsel, and professional development**
- **28 states** have at least one state-level nonunion professional educators' association
- Several national professional educators' associations **operate chapters in multiple states**

Non-union organizations serve approximately 300,000 education professionals, significantly less than the NEA and AFT



Sources: Organizational websites and 990s, American Association of Educators

AFT and NEA affiliates may consider merging to enhance membership, but attempts to merge are often fraught

In 1998, the NEA and AFT attempted to merge. Both union leaders at the time supported the move, but NEA members rejected the proposal. However, since then, a few AFT/NEA mergers have taken place at the state level.

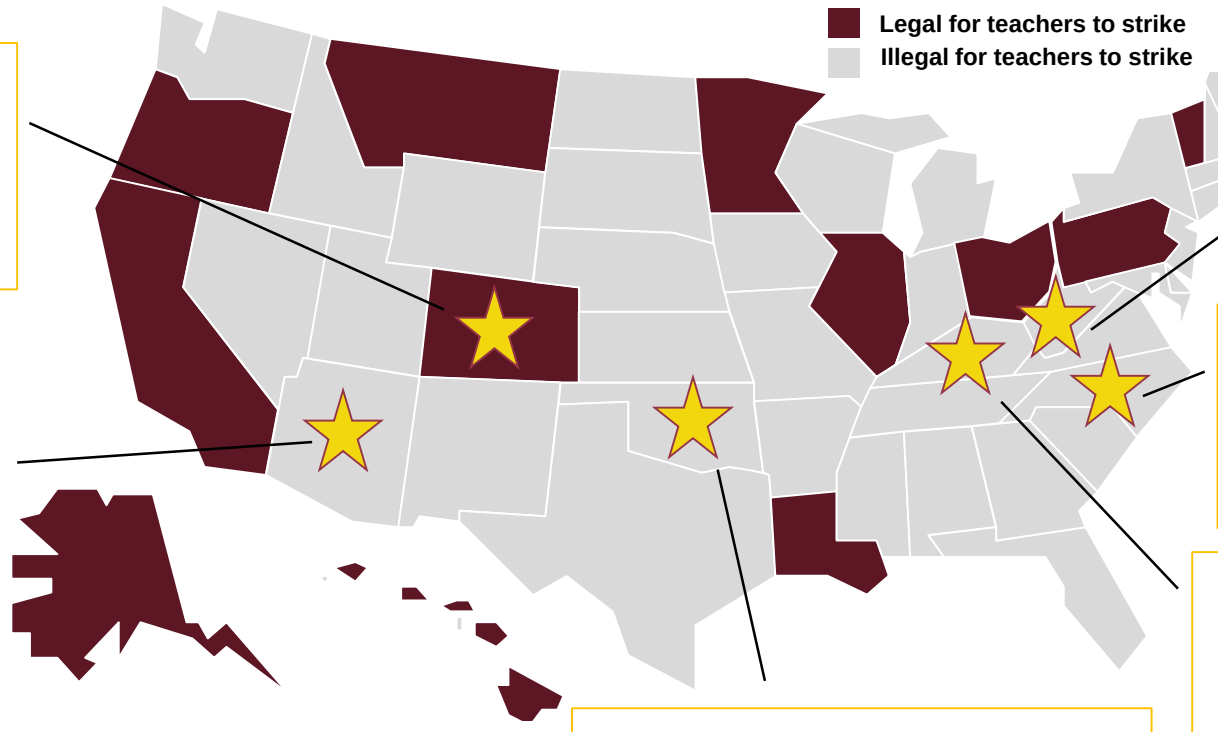
Where	When	Number of teachers
Education Minnesota	1998	80,000 members
Florida Education Association	2000	140,000+ members
Montana Education Association-Montana Federation of Teachers	2006	17,000 members
New York State United Teachers	2006	600,000+ members
North Dakota United	2013	11,000 members

Whether or not a merger is successful depends on factors including the extent to which existing members work in the same field and whether the groups have a history of competition or coordination. As teachers unions stand to lose funding after Janus, mergers at the local and national levels may become more likely.

Source: Education Week

Recent large-scale teacher walkouts and strikes may help to re-energize teachers unions

- It is **illegal for teachers to strike in 38 states and D.C.**
- In states where striking is illegal, **teachers may frame work stoppage as a "protest," "walkout," or "job action"** to avoid triggering court action, and teachers may take sick days or personal leave to avoid consequences
- In most cases, **missed instructional time will have to be made up** at the end of the year



In Colorado, teachers went on strike for 5 days to protest low wages.

In Arizona, teachers staged a 6-day "walkout" to protest low pay and decades of cuts to statewide education spending.

In West Virginia, teachers mounted a 9-day statewide "walkout" to protest low wages and costly health care.

In North Carolina, teachers staged a one-day "walkout" to protest low wages and poorly funded schools.

In Kentucky, teachers rallied in a "day of action" to protest new legislation to overhaul the state's public pension system.

In Oklahoma, teachers staged a 9-day "walkout" to protest low pay and statewide cuts to education funding.

Sources: nytimes.com; vox.com; time.com; nea.org

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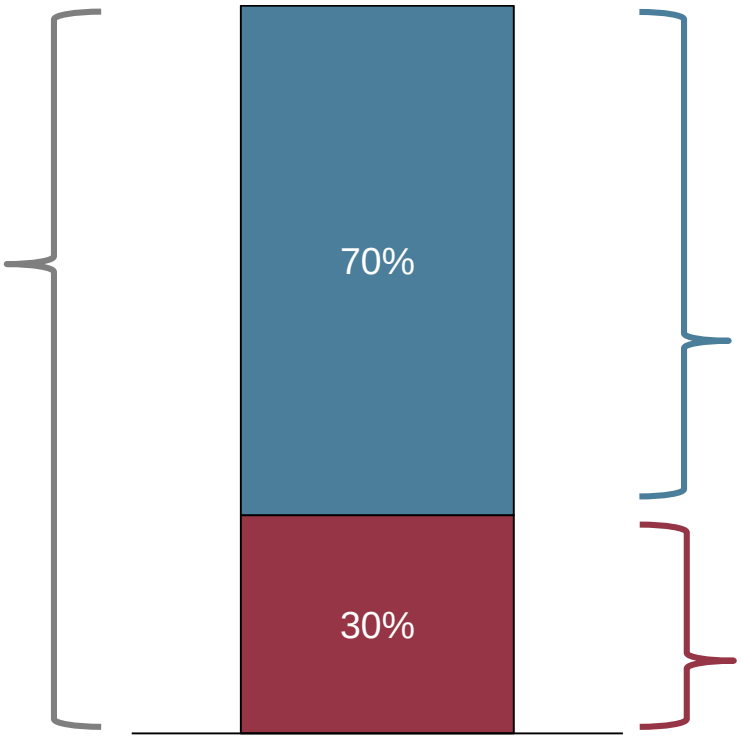
4 *Janus v. AFSCME*

Current interpretation of the U.S. Constitution allows unions to collect fees from employees who opt out of union membership

*Employees who **do not** opt out of union membership …*

… pay full dues, which are often automatically deducted from employees' paychecks

Total Union Dues



*Employees who **do** opt out of union membership …*

… pay an agency fee — often about 70 percent of union dues — to support the costs of collective bargaining and other union activities that benefit all workers

… are exempt from the remaining portion of dues, which unions can use for other activities

In 1977 the U.S. Supreme Court endorsed this arrangement in *Abood v. Detroit Board of Education*

Abood's agency fee ruling seeks to balance union and employee interests — but is facing a new legal challenge

Unions argue that agency fees maintain a balanced system …	… and adequately protect employees' free speech
If employees can benefit from collective bargaining without paying into the system ("free riders"), fewer and fewer employees will continue to pay. In this case, the system becomes unstable and may collapse, causing labor strife.	By allowing employees to opt out of the portion of union dues used to fund political activity, agency fees prevent unions from compelling employees to support speech with which they disagree.

However …

Some employees argue that agency fees also violate their right to free speech
The current legal challenge argues that collective bargaining in the public sector is inherently political because unions are using agency fees to bargain over how public money should be spent; therefore, agency fees are a form of compelled political speech, which violates an individual's First Amendment rights.

The forthcoming *Janus vs. AFSCME* decision will shape future law and policy related to agency fees for all public sector unions

	Plaintiff	Respondent
Who is it?	**Mark Janus**, a child support specialist in the Illinois Department of Healthcare and Family Services**, was required to pay an agency fee of $45 per paycheck to the local chapter of AFSCME,** of which he was not a member	The **American Federation of State, County, and Municipal Employees (AFSCME),** a union of approximately 1.4 million public employees in occupations such as law enforcement, transportation, and public works
What is their argument?	• Bargaining with the government is **inherently political speech** and the government is **compelling that political speech by permitting the union to charge agency fees** • Therefore, *Abood* was wrongly decided and **the court should instead apply First Amendment scrutiny — a higher standard than ordinary review**	• Agency fees **prevent individuals who benefit from collective bargaining from being "free riders"** • The **government is held to a different standard when it is acting as an employer**, so as long as it is acting within the scope of regulating pure employment matters for its own employees, **no First Amendment issues are raised**

Sources: scotusblog.com; afscme.com; supremecourt.gov

The U.S. Supreme Court's decision will likely reference a long series of precedents on agency fees and free speech

Case	Year	Summary
Pickering v. Board of Education	1968	There is no First Amendment protection where the government regulates its employees speaking as employees. If employees are speaking as citizens on matters of public concern, the Court will balance the interests of the employee as a citizen with the interests of the state as an employer.
Abood v. Detroit Board of Education	1977	Agency fees are legal and nonmembers may be assessed agency or "fair share" fees to recover the costs of "collective bargaining, contract administration, or grievance adjustment purposes."
Lehnert v. Ferris Faculty Association	1991	Unions may compel fees from nonmembers only for those activities "germane" to collective bargaining.
Knox v. Service Employees International Union (SEIU)	2010	A special assessment fee for a "Political Fight Back Fund," assessed after the annual agency fee had been collected, infringed on nonmembers' First Amendment rights. Unions must give notice about new fees and an opportunity for nonmembers to opt out.
Harris vs. Quinn	2014	Home health care workers cannot be compelled to pay agency fees because they are not full public-sector employees. This decision did not overturn *Abood*, but opened the door for *Abood* to be revisited in regards to full public sector employees.
Friedrichs v. California Teachers Association (CTA)	2015	Though no majority opinion was reached due to the death of Justice Scalia, the Court's 4-4 vote effectively affirmed the judgement of the lower court on the question of whether the California Teachers Association's agency shop arrangement and the opt-out requirement violated their First and Fourteenth Amendment rights, holding that *Abood* does allow unions to create agency shop arrangements.

Sources: uscourts.gov; supremecourt.gov; justia.com

Given the facts of the case and the legal precedents at issue, there is a range of plausible rulings. Possibilities include:

Very narrow

Very broad

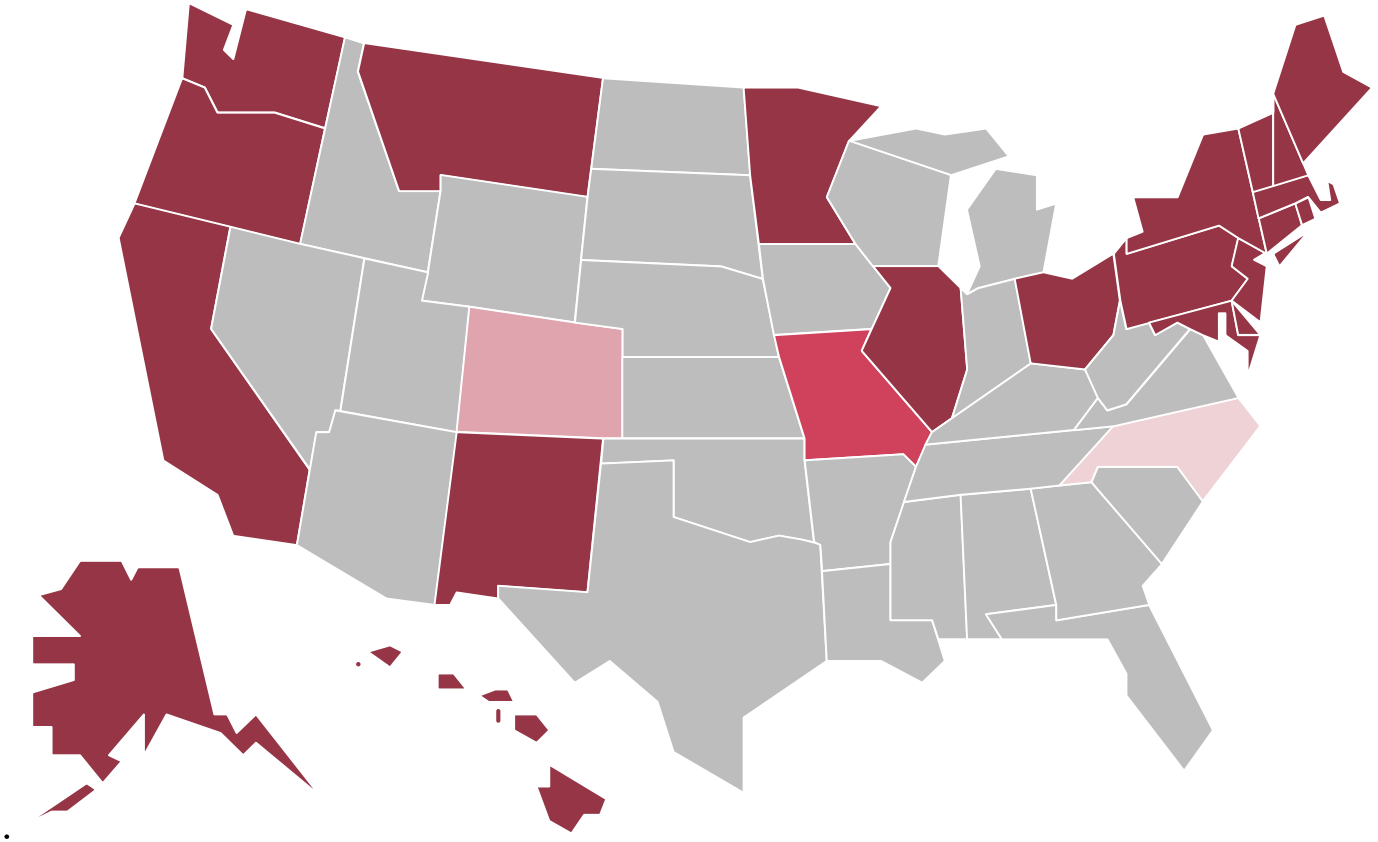
Janus loses, lower court ruling is affirmed	The Supreme Court could find that Janus' complaint never should have been accepted by the district court in the first place. Under this ruling, nothing changes.
Janus loses, *Abood* is affirmed, but the Court reverses *Lehnert*	The Court rules that *Abood* stands and state laws that allow agency fees are constitutional. However, the definition of "chargeable expenses" is revisited.
Janus loses, *Abood* is overturned, *Pickering* applies, Illinois' law passes the *Pickering* test	The Court overrules *Abood* and applies the *Pickering* test* to the facts presented; the Court then finds that Janus is speaking as an employee when he pays his agency fees **or** that he is speaking as a citizen on a matter of public concern, but his free speech interest is outweighed by the state's employer interests.
Janus wins, *Abood* is overturned, *Pickering* applies, Illinois' law fails the *Pickering* test	The Court overrules *Abood* and applies the *Pickering* test to the facts presented; then the Court finds that Janus is speaking as a citizen on a matter of public concern **and** his free speech interest outweighs the interests of the state as his employer.
Janus wins, *Abood* is overturned, and *Pickering* does not apply	To reach this ruling, the Court would either 1) find that *Pickering* only applies when the government is preventing speech but not when it is compelling speech; or 2) agree with Janus that all government employee speech is inherently political.
Janus wins, and then some	The Court could go beyond the question presented to find that exclusive representation is also unconstitutional. (This scenario would be unusual, but it is not impossible.)

Source: Bellwether analysis

**Pickering* assesses the constitutionality of free speech constraints when the person affected is a public employee.

If the court overturns *Abood*, as most experts expect, unions stand to lose significant revenue

Unions will likely lose the most in terms of revenue from the 21 states and D.C. where agency fees are currently permitted and collective bargaining is required



Source: NCTQ

Unions' membership rates will likely decline, though unions are taking steps now to recruit and retain members

If the Court rules that agency fees are unconstitutional, unions will likely lose members. However, estimates depend on several variables and vary widely:

-3% to -53%

Depending on historical membership trends in various states and the importance of national dues, AEI's Nat Malkus estimates that the NEA could lose between 3 and 53 percent of its members over the next five years.

-10%

The NEA's budget committee projects a loss of 300,000 members, or about 10%, if agency fees are eliminated.

-25%

RiShawn Biddle reports that the AFT is likely to lose at least one-quarter of its members.

What are unions doing now to prepare for a potential defeat?

- Re-engaging current members and educating them on the benefits of membership and the potential negative effects of *Janus*
- Recruiting new members by accessing new-hire orientations, for example
- Improving communication with current and potential members
- Expanding organizing efforts through door knocking, community outreach, and workplace actions
- Hosting local and statewide summits
- Identifying ways to expand services to retain members

Sources: Nat Malkus, *The Janus Case and the Future of Teachers Unions*; The74; nea.org; dropoutnation.net

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Though there is significant analysis and speculation, no one is sure how broad or narrow *Janus'* impacts will be

Key Questions:

- ✓ Will union power decline, and by how much?
- ✓ How will the outcome affect unions' financial models?
- ✓ How will the case affect unions differently in different states?
- ✓ How will the case affect different public sector unions (for example, teachers unions or others)?
- ✓ How will unions adapt (or not adapt) to new circumstances?
- ✓ What worker protections will become vulnerable?
- ✓ To what extent will alternative associations and groups fill in some of the gaps?
- ✓ How will the case impact the teaching profession in particular?

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