

The Right To Work For Less:
The Effect of Right-to-Work Laws on Unfair Labor Practice Filing at the NLRB

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Abstract

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This study investigates the impact of right-to-work laws on the filing of unfair labor practice complaints at the National Labor Relations Board in the U.S. I analyze a unique dataset I collected of the census of unfair labor practice charges filed by private sector employees at the NLRB from 2000 to 2019. I implement mixed effect models and the synthetic control method to show how workers, the frontline victims of right-to-work laws, are impeded in their efforts to protect collective bargaining rights. I find evidence of disparate attempts to make use of unfair labor practice filings as right-to-work is adopted that illustrates both innovation and frustration among Labor in the U.S. This work highlights how a key mechanism in the acquisition of union premiums is changed as a result of right-to-work laws.

Introduction

Right-to-work laws are devastating to organizing America's workforce (Keith & Peterson 1975, Hogler 2011, Bruno et al 2015, Devinatz 2015). In the midst of steady union decline for the past half century (Rosenfeld 2014), the recent adoption of right-to-work laws particularly in labor strongholds like Indiana and Michigan emphasize labor's weakened position in the United States. Legislation under the umbrella of "right-to-work" (RTW) is defined by its restrictions to union security agreements, that is, agreements that set the extent to which unions can require membership as a condition of employment. Researchers have noted the effect RTW has had on more general concerns like wages, political participation, and inequality (Eren & Obeklik 2011, Kogan 2017, Feigenbaum et al. 2018, VanHeuvelen 2020), but little attention is paid to the frontline victims of the law or interrogates how unions respond to RTW. Too often researchers have described RTW as a foregone conclusion that impedes labor organizing while a governor's signature is still wet. Using a novel dataset of all unfair labor practice (ULP) complaints filed at the National Labor Relations Board (NLRB) from 2000 to 2019, I investigate how quickly and to what extent RTW laws impact union activity. In this paper, I show that filing complaints under NLRB ULP statutes is one conventional union action diminished by the constraints of RTW. Further, I show that strategy around ULP complaints can constitute effective means to protect labor's interests in an otherwise unfavorable legal environment.

The filing of ULP at the NLRB is available to unions to protect collective bargaining (Bronfenbrenner 2009). The National Labor Relations Act of 1935 preserves the rights of employees to form, organize, join, or assist a labor organization. Interference into these rights is defined as Unfair Labor Practice. The ability to file ULP charges through the NLRB protects

workplace peace and pro-democratic ideals in the American workplace (Dannin 2006). ULP remedies seek to set the boundaries where labor peace can continue and enforce agreed upon working conditions (NLRB Case-Handling Manual 2019). I analyze all of the NLRB ULP filings from 2000 - 2019 to investigate how unions' usage and success rates fluctuate as a result of the adoption of RTW.

Past research demonstrates that RTW has indirect negative effects on social stratification and considerable negative impacts on mobilizing voters (Collins 2013, Eren and Ozbeklik 2015, Feigenbaum et al 2018, VanHuevelen 2020). Prior research often overlooks the direct victims of such laws in favor of downstream outcomes. There is some research on the effect of RTW on employment which finds mixed results on job growth, particularly in manufacturing sectors. For instance, in Michigan, growth in manufacturing slightly rose, while in Oklahoma, there was essentially no effect on slowing the manufacturing sector's decline (Rosenfeld 2020). To some extent these analyses underdevelop the pathway of RTW effects by leaving out analysis of who the law is designed to disrupt. By focusing too heavily on the labor market, we miss the pathway through which union power props up employment and financial values indicative of a healthy workforce (wages, GDP, etc). Unions and other collective bargaining units are the front line victims of these laws, and yet little research has been done to systematically assess how union processes are affected by these laws. To gain insight into the change in union processes after the adoption of right-to-work, I collected a unique dataset of all private sector ULP filings between 2000 and 2019. By analyzing the trends in these 541,033 charges across all states, I am able to detect how "the right to work for less" extends beyond union wage premiums or unionization

rates and impacts the usage of a conventional union activity--the filing of ULP complaints at the NLRB.

Recently, RTW laws have been adopted in several states in the Midwest. Particularly surprising among those who have adopted are Michigan and Indiana. Many scholars have identified the legacy of strong unionism in Michigan and Indiana (Perlman 1929, Mitchell 1980, Hogler 2015). The positionality of these states in terms of labor strength makes passing RTW seem impossible. Yet, both of these states adopted the law in 2012. RTW was passed in Michigan in a one-week period during the lame duck session of Governor Snyder's tenure following an attempt for union bargaining to be codified in state law (Kaminski 2015). In contrast, Indiana's RTW passage was not so much shoved through, as vigorously lobbied. Indiana's adoption of RTW relied upon concerted campaigning and systematic undermining of Indiana's economic position in the United States economy by high-powered corporations and businesses (Peck 2016). After the adoption of RTW, it is unclear in the literature how unions navigate a new disadvantageous legal context in these recently adopted states in terms of the strategies available to maintaining union power.

In a stiff field of pro-capital policies, there are few options maintaining current union power. Clawson and Clawson (1999) write: "Given a capitalist economy, the union's long-term survival depends on an ability to deliver wages, benefits, and a systematized defense of workers' everyday workplace rights." These same reasons are cited as protecting the labor strongholds in the U.S. of the Mid-Western states (Western and Rosenfeld 2011). One option available for maintaining labor provisions in these states is an effective usage of ULP charges. NLRB ULP charges protect the bounds of good faith negotiation in union organizing and contract bargaining

(Galiatsos 2015), often wins back pay for employees (Bronfenbrenner 2009), and is one of the few routes to challenging layoffs and gaining reinstated employment in the at-will doctrine U.S. (Miles 2000, Herrick 2007). However, Labor has long been skeptical of the efficacy of ULP provisions. Dannin (2006) illustrates that the letter of the law of the NLRA is strong, but historically these ULP cases have failed to offer the level of legal protections or the speedy remedies as suggested in the language of the NLRA. This conventional union activity of filing ULP to provide protection for organizing and maintaining benefits typically associated with union work (stable employment, higher wages etc.) may be a tool worth leaning on as RTW is adopted, but given the history and broad recognition of the failures of ULP charges, union workers may look elsewhere (Weiner 2005). Michigan and Indiana are sometimes taken as emblematic of the fall that unions have suffered in the past sixty years, but as the flagships of unionism in the U.S. their strategy in filing ULP can precipitate to other locales facing similar challenges (Goldfield 1986, Fantasia 1988).

Michigan and Indiana are notable cases because of their relative historical positions of strength and current position of legal disadvantage. Michigan is the birthplace of the United Auto Workers, and has long been the location of leadership for unions in the U.S. (McLaughlin 1970, Minchin 2017). Michigan's union coverage is consistently higher than the United State average, and has been associated with pro-Labor outcomes (BLS 2019). However, Labor in Michigan was not without its struggles with the decline of unionism in the United States during the 1970s and '80s (see Babson 1986). In contrast to Michigan, Indiana is not noted for its union stronghold status for private sector unionism. Rather, Indiana is heralded for its public sector unions where teachers unions are prevalent (Cantin 2012, Slater 2012, Kahlenberg & Green 2012). However,

these public sector unions have been shown to organize alongside private sector compatriots against the implementation of RTW in Indiana (Greenhouse 2012). Indiana's private sector union rates tend to hover just below the average union coverage rates in the total United States (BLS 2019 b). Since this analysis focuses on private-sector union behaviors, the case of Indiana's relatively weaker private sector unions offers an interesting contrast to the traditional trade unionism of Michigan. Moreover, Peck (2016) discusses how RTW laws introduced a geography of Labor resilience in the U.S. preferencing some states over others as hotbeds of organizing against RTW while others suffered through dwindling coverage. The passage RTW in Indiana and Michigan illustrates a larger solidification of deregulation in the labor market that downgrades worker power and prevents organized responses from Labor to these anti-union legislations.

In this research I investigate the change in strategy and success of unfair labor practice filing at the National Labor Relations Board as a result of the adoption of right-to-work laws from 2000 to 2019. I use Indiana and Michigan as focal cases since both states adopted right-to-work in Spring 2012. It becomes clear that trends in these focal states suggest quite different strategies around unfair labor practice in response to the law. Indeed, RTW prompted a change in the usage of unfair labor practice filings highlighting the disadvantage conferred by RTW on conventional union activity. In Indiana, there was an enormous uptick in individuals filing ULP and these charges were largely thrown out by the NLRB at the time of the passage of RTW, reflecting a harrowing failure of the letter of the law from the NLRA (Dannin 2006). In Michigan, significant resources and collaboration with large unions and federations was required in order to maintain pre-RTW rates of success for filing unfair labor practice. These

collaborations demonstrate the substantial barrier that RTW presents to union activity (Elliot & Huffman 1984, Kaminski 2015). Taken together these findings offer further insights into the value of concerted actions across federations and locals.

Background

The National Labor Relations Act of 1935 or the Wagner Act accomplishes three main goals. First, the Wagner Act establishes the NLRB. Second, the NLRB certifies union elections thereby formalizing and legitimating the legal status of a union to bargain on behalf of workers. Third, the NLRB merits, investigates, and settles ULP charges against employers. The Taft-Hartley Act of 1947 amended the Wagner Act to hinder union power in the U.S. Taft-Hartley was drafted in response to the wave of strikes during 1945 and 1946 (Hartley 1948). The Act amended the NLRA to allow employers to file unfair labor practice against unions as well as a battery of prohibitions against union activity like secondary boycotts, solidarity strikes, and political campaign contributions by unions (Hartley 1948). Taft-Hartley also allowed states to establish right-to-work laws, and states throughout the South began passing such laws immediately (Hogler 2015). This analysis focuses on how ULP trends are changed due to the adoption of RTW, therefore it is important to consider the types of allegations available to employees who file.

The NLRA defines five types of unfair labor practice that interfere with employees specifically. The first, Section 8(a)(1) prohibits employers from interfering with employees engaging in collective activity. This allegation traditionally protects organizers and managerial workers (Weinstock 1982). Section 8(a)(2) prohibits employers from dominating or assisting a union. Domination generally refers to establishing a company union or continuing to negotiate

with a minority representative despite a majority representative being in place. Assistance generally refers to employers advocating on behalf of a specific representative under threat of retaliation from the employer (Secunda et al 2014). Section 8(a)(3) prohibits discrimination against employees because of union activity. This discrimination comes in the form of layoffs or demotions of pro-union employees (Rainey 2015). It can also refer to the refusal to hire, but such a charge is rare because evidence can be difficult to obtain (Taylor 2015). Section 8(a)(4) prohibits punishment of employees who file with the NLRB. This practice, too, typically comes in the form of layoffs, but the justification is based on the suspicion of filing charges at the NLRB. And, the fifth, Section 8(a)(5) requires that employers bargain in good faith. This section is a lengthy list of do's and don'ts; the list can be distilled to employers engaging with bargaining units through misdirection. These five allegations can be used as part of a larger strategy for the protection of employees.

The NLRA is designed to protect private sector workers with a few exceptions. Independent contractors, employees who work for their own parents, and workers under the jurisdiction of the Railway Labor Act are barred from using the NLRB's provisions. Employees who file under the Wagner Act may or may not be in a union to file, because all employees are legally protected under the NLRA. While the option is there for a large swath of American workers, there is unequal access to filing unfair labor practice (Getman 2010, Shapiro 2010). The decision to file unfair labor practice can be difficult especially for precarious workers (Secunda et al 2014). While there are many employees who are able to leverage unfair labor practice, taking advantage of the tool incurs some challenge. Employers can also file against collective bargaining activities through the NLRA since the act was amended by the Taft-Hartley Act of

1947. This analysis centers union strategy against right-to-work laws and therefore employer filing is outside the bounds of this analysis. There is some evidence that right-to-work has no effect on employer-filed unfair labor practice (Koeffler 1992).

Scholars have demonstrated the downstream effects of right-to-work in several areas of social life. However, there has been substantial difficulty in identifying a causal relationship of right-to-work laws on broader social issues (VanHeuvelen 2020). Ozkan and Obeklik (2011) find that for Oklahoma there is a small to negligible effect of right-to-work on employment that varies between those two poles across different industries. Dinardo and Lee (2004) report similar findings suggesting that right-to-work may not change the amount of jobs, just the content of their bargaining options. Others assess the effect of right-to-work on wage premiums to be small to nonexistent as well (Manzo 2005, VanHeuvelen 2020). While the effects touted by proponents of passing right-to-work has sparsely been found empirically, the benefits to Capital at Labor's expense is clear (Hogler, Shulma, and Weiler 2004, Rosenfeld 2014, Farber 1984). Indeed, RTW is associated with pro-business behavior in firm changes and political participation (Rao et al. 2011, Feigenbaum 2018). While these studies have endeavored to make sense of the relationship between employment, bargaining, and economic conditions, little work has been done to investigate how employees use bargaining tools to manage the effects of right-to-work. Countermovement tactics are employed wherever right-to-work is nearing passage, but how these tactics change is overlooked (Dixon 2010).

Some research has illustrated resistance efforts by unions to right-to-work laws. Jacobs and Dixon (2006) explore the difficulty of establishing right-to-work when unemployment is increasing and how labor uses this labor market condition as a bargaining chip. They also note

with declining prevalence of strike threats, union power is weakened in the fight against right-to-work. Rosenfeld (2014) demonstrates that as strike threats went down, unfair labor practice suits increased in kind. While Rosenfeld and others do not see unfair labor practice filings at the NLRB to be nearly as effective at persuading capital as a strike might, the movement tactic of filing at the NLRB for movement goals like responding to right-to-work enactment is largely unknown. Sociolegal scholars have assessed unfair labor practice behaviors and determinants, but these studies fail to treat charges as part of a larger benefit to labor as a movement. Semet (2016) finds that administrative law judge decisions on NLRB unfair labor practice cases are associated with the partisanship of the NLRB composition, but pro-labor cases are treated as isolated instances of unfair labor practice. Weiler (1983) suggests that unfair labor practice could be used as part of a larger movement campaign, but unfair labor practice is perhaps not effective enough to make meaningful gains for labor.

Hypotheses

While prior research has failed to systematically address unfair labor practice outcomes in response to the adoption of right-to-work laws, three hypotheses emerge from the literature. First, I assess the association of union resources with ULP in a RTW context. Dannin (2006) highlights the position of labor on the usage of NLRB provisions by explaining how labor generally views the NLRB as ineffectual. Rather than invoke federal government powers through the unfair labor practice filing system during times of strife, workers and union representatives would have the contract negotiations get settled employee to employer or under the supervision of judges and juries. Workers who collectively bargain with larger amounts of resources do not need to leverage ULP because their power resides in membership and resources. Involving the

federal government, in this purview, opens unions to the consequences of administrative law judge decisions based on common law in the United States that has been decidedly pro-capital since the 1800s (Ellwood and Fine 1986, Duff 2009, Dannin 2009). *H1 - larger union resources are associated with lower unfair labor practice especially as right-to-work is passed.*

In the focal states of Indiana and Michigan, union response to RTW is likely, but the structure of this response remains an open question in the literature. There are two competing hypotheses presented by the literature regarding how the change to unfair labor practice usage can take place. *H2 - right-to-work causes unfair labor practice filings to increase in the short term, and eventually regress to similar trends as long time right-to-work states.* Fantasia (1988) suggests that in contentious times the symbolic value of protecting labor through institutional means, like filing at the NLRB, can strengthen bonds between workers. In the short term, these means can support unions while innovative approaches to power are organized elsewhere. Holmes (1998) describes how right-to-work performs as a stand-in for a pro-business economic environment and in the short term workers may be able to make tactical plays against the environment; eventually, the fight will succumb to the disadvantageous policy environment. This hypothesis suggests that in the short term, unfair labor practice filing can be used to cushion the transition to right-to-work context. *H3 - right-to-work causes unfair labor practice filings to drop quickly as the law is enacted.* Hogler (2015) codifies how right-to-work is the most significant factor in union decline, and unfair labor practice filings may be a sign of how quickly that decline is accelerated by the passage of such laws. This steamroller effect of RTW is suggested in many existing works. Activities like ULP may seem less effective in a new RTW context. Additionally, the ineffectual remedies of the NLRB may be part of the calculus of

protecting unionism in these newly adopted RTW states (Bronfenbrenner 2009). The lengthy wait times for NLRB decisions, and the general need for innovation as disadvantageous legislation is passed may prompt a move away from ULP altogether (Fantasia 1988, Dixon 2008, Dannin 2009).

Data + Methods

This research investigates to what extent right-to-work laws change unfair labor practice filings at the National Labor Relations Board from 2000 to 2019. Since the passage of right-to-work is a one time event, existing works often use the passage of these laws as a natural experiment to understand their consequences on a number of outcomes. I follow a similar design to Eren and Ozbeklik (2011) through usage of the synthetic control method for its numerous benefits in policy analysis (Abadie and Hainmueller 2015). RTW effects are often noted in natural experiment setups or dummy variable explanations (Farber 1984, Hogler et al 2004, Rao et al 2011, Feigenbaum et al 2018). These methods are at times criticized for not clearly managing the self-selection issue of local laws and the aforementioned difficulty assessing comparative local political contexts. The synthetic control method improves on other formats by offering a data driven way to construct counterfactuals. This method allows for far less ambiguity around the selection of control state comparisons and the pathway to selection for control states are reproducible (Abadie, Diamond and Hainmuller 2010). In a synthetic control parameterization, treated units are compared to a “synthetic” version of the same unit by calculating what the treated unit would be like without receiving the treatment. The counterfactual synthetic unit is based on weighted control units most similar to our treated unit of

interest. I apply this method to Michigan and Indiana separately to understand how ULP trends change as a result of RTW.

The cases selected for the synthetic control method fits are shown in Figure 1. Indiana and Michigan both received the right-to-work law in 2012 (Manzo et al 2015). There are other states during the time period of the data who received the law, Wisconsin, West Virginia and Kentucky all received the law since 2015 and Oklahoma enacted the law in 2001. The relatively short post-treatment time of two or three years is too short to conduct this analysis without incurring larger uncertainty around the model fits and their value in understanding downstream effects on labor strategy. A similar logic excludes Oklahoma from the analysis for having only a one year pre-treatment period. Future work is necessary to assess the unfair labor practice strategizing in these states. Additionally, the cradle of union power in the U.S. has been traditionally clustered in the Midwest. Kentucky and West Virginia require a different attention to past histories in labor than my focus here on Michigan and Indiana.

The synthetic control method is an extension of traditional mixed effects models that allow for time-invariant variables to remain constant and time varying variables to be analyzed piecemeal. The extension on these mixed effect models is in the construction of counterfactuals based on covariates within the data. I select a host of time-varying covariates to make sense of three contextual factors in unfair labor practice filings: economic conditions, local political composition, and union resources. These three factors are used to construct the weights and counterfactuals used in the synthetic control method. Economic conditions are the primary thrust of union activity historically and are inextricably tied to the rationale for passing right-to-work in a state (Tomaskovic-Devey and Lin 2013, Peck 2016). Local political composition is responsible

for the capacity to pass right-to-work laws and to some extent the decline in unionization rates (Rosenfeld 2014). Union power, measured in terms other than just the rates of unionization, demonstrates how resources influence unfair labor practice usage (Wilmer 2017). These three factors are designed to construct a counterfactual version of Michigan and Indiana that centers the importance of time varying variables that affect union activity.

Here I provide a cursory look at the state level, time-varying covariates. The list of data collected for state level covariates is shown in the Appendix under Table 1. The economic conditions for each state-year are operationally defined as per capita income, per capita gross domestic product, and percent unemployment. These economic indicators help make sense of how unfair labor practice trends vary with how much union workers and their neighbors are paid, the level of resource usage that has been converted into products, and how robust employment opportunities are in each state. Each of these values is related to what unfair labor practice filing seems to offer in terms of benefits: protection from being fired in an at-will doctrine context, offering pay adjustments and reimbursement, and preventing employers from outright exploitation of workers and resources. The political composition is solely defined as the percentage of democrats in each states' legislature. There are few political composition covariates that are time-invariant. There is evidence that democrat-driven states tend to have stronger union presence and more successful cases of unfair labor practice that go to a Board decision (Semet 2016). Union power is investigated in terms of unionization rates, union dues collected, and union assets. These values demonstrate different types of union power throughout a state. Unionization rates relate to the prevalence of union membership throughout the state which may allow for interpretation about the position of Indiana and Michigan as Midwestern,

historically pro-union states. Union dues allows for interpretation of how union budgets are related to the outcomes of unfair labor practice filings. Union assets describe a different concept than what budgets are looking like for unions, but rather how entrenched the unions are in terms of investment in the state. This disaggregation helps make sense of liquid and non-liquid resources available to unions in a state-year.

Indiana and Michigan both enacted RTW in 2012 allowing for a seven year post-intervention period for analysis. The short-term changes in unfair labor practice filing can be observed under these time constraints. I collected this census of unfair labor practice filings from 2000 to 2019 was collected via webscraping the NLRB website using the R package httr and harmonizing the data with the obsolete NLRB filing system called CATS that I obtained through a FOIA request (NLRB-2020-000024). The initial scraping procedure required downloading all the case numbers formerly available at the bottom of any Recent Filings page of the NLRB website prior to their renovation of the website in Spring 2020. Then I concatenated the case numbers to each case's individual web address, downloaded the case webpage and stored the relevant information from each. The filing data available on the NLRB website only goes back to approximately 2008 (further description available in the Appendix). Therefore, I made a FOIA request NLRB-2020-000024 that simply made the pre-2008 CATS data link available on the NLRB website and the CATS data hosted on data.gov continue to be there for any researcher to use. The CATS data was designed to function as a proprietary database; therefore the CATS data was wrangled to reproduce the relevant information taken from the current NLRB filing system. The total unique unfair labor practice cases including the scraped current data and the harmonized CATS data total 541,033 separate cases. While this data is at the

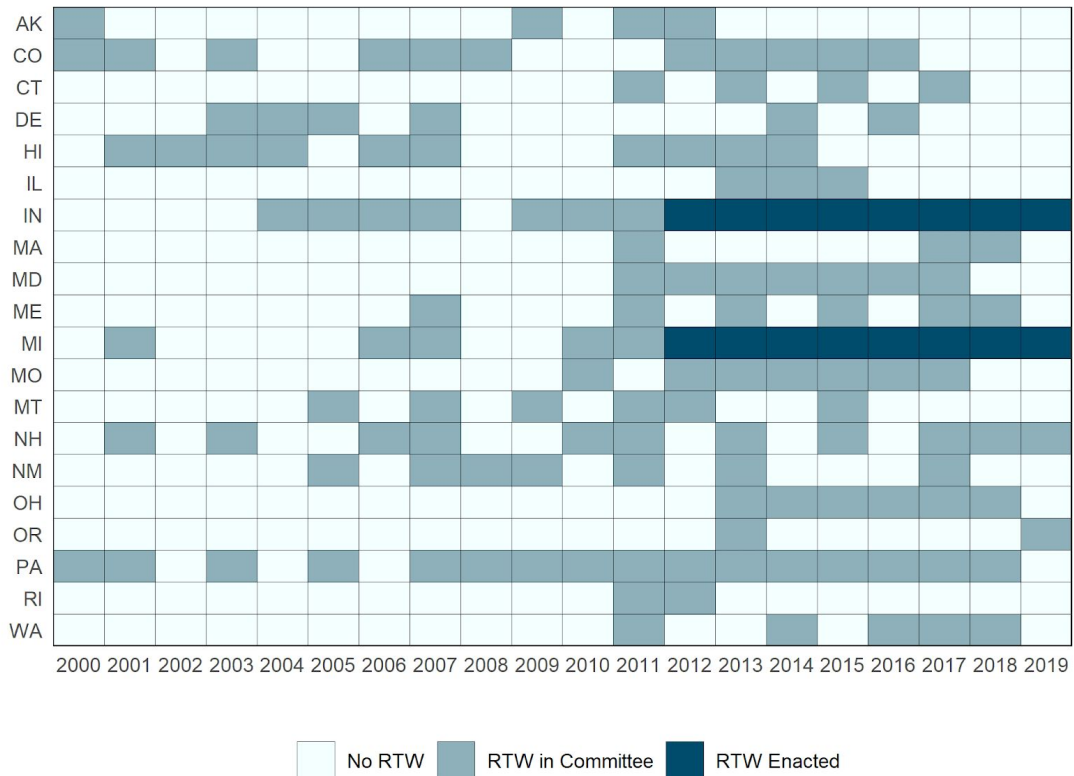
case level, I have aggregated this data to the state-year level to take advantage of the synthetic control method with care to note differences in the outcomes of the unfair labor practice filings as well as the counts.

The case data provided on the NLRB website and via CATS only contains some information regarding each unfair labor practice case in the interest of privacy. For each case I have entries for the charging party which is filed as either a union(s) with local affiliation information, individuals, or a combination of both. Names of individuals filing are censored, and while one may make FOIA requests for the name on a particular case, doing so for over 500,000 cases was not tenable. The entry for the charged party, usually called “Employer”, does include the name of the business where the charge is alleged to have occurred. There is asymmetrical information about the location of charges with some charges including exact street addresses and others kept at the city or county level. The data contains the type of charge alleged through the five allegations I have outlined in the literature review and how each of these allegations is used. For instance a charge may suggest that an employer committed unfair labor practice through retaliation in section 8(a)(3) of the NLRA and along with this allegation the entry will describe the method of retaliation in just a few words like: “Layoffs for organizing”. I have the outcome of the charge: withdrawal, dismissal, informal settlement, formal settlement, Administrative Law Judge decisions, and Board orders. (NLRB Case-Handling Manual pg. 35). The opening date and closed date of the charge processed by the NLRB is included, as well as the number of employees involved. The number of employees involved is absent from this analysis due to incorrect interpretation of employees involved across time and space. For some charges, the number of employees as reported by the NLRB is single digits, whereas for others, they name the

full set of employees for the parent company. In both cases, this number of employees involved is misleading at best. By aggregating these individual cases to state-year level I can analyze the distribution of case success and usage over time.

I use the synthetic control method on the aggregated case data as the main thrust of this analysis. The synthetic control method creates a counterfactual treated unit based on a control pool who does not receive the intervention (Abadie et al 2010, Abadie et al 2015, Xu 2016). Rather than select all states without RTW as synthetic controls, I use only states that had a chance at enacting the law, which I define as having at least one RTW bill go to committee in the state legislature. I hand coded the state legislative agendas for each state that did not have a right-to-work law signed into law prior to the time period from the data. This group of control states excludes a few non-RTW states where the local political context did not have a formal discussion about enacting RTW (California, New Jersey, New York). The chosen states to build the counterfactual non-RTW states are shown in Figure 1.

Figure 1.



Michigan and Indiana adopt RTW in 2012. The remaining states had bills that could have enacted RTW. These remaining states were selected for controls to build counterfactuals in the Synthetic Control models.

Covariates included in this analysis focus on local economic context, political composition, and union resources. Economic context is operationalized as GDP per capita, % unemployment, and income per capita (Dixon 2008, Ozkan and Obeklik 2011). Political composition is demonstrated through the percentage of Democrats in the state legislature per year and the NLRB’s political composition (Feigenbaum et al 2018, Semett 2015, Devinatz 2015). Union resources are considered through % union coverage and union assets in dollars (Martin and Dixon 2010, Kimeldorf 2013). Using these data I first fit mixed effects negative binomial models to indicate if *Hypothesis 1 - larger union resources are associated with lower unfair labor practice especially as right-to-work is passed* is supported before proceeding to the synthetic control method for the remaining hypotheses. I include random effects at the state level

to capture the differences in state labor context as well as the regional structure of NLRB case handling. The NLRB maintains a regional or subregional office for each state in the U.S. While there is little evidence of different treatment across the different offices, including the state level random effects acknowledges the potential for differences deriving from regional office behavior (Cooke and Grautschi 1982, Fisk and Malamud 2009). Both of my chosen models allow for time invariant effects to remain constant while observing the relationship between time-varying covariates and the unfair labor practice counts and content outcomes. Both methods measure state-level random effects to help capture the issue of local context in assessing right-to-work policy outcomes (Goldfield 1986, Collins 2013).

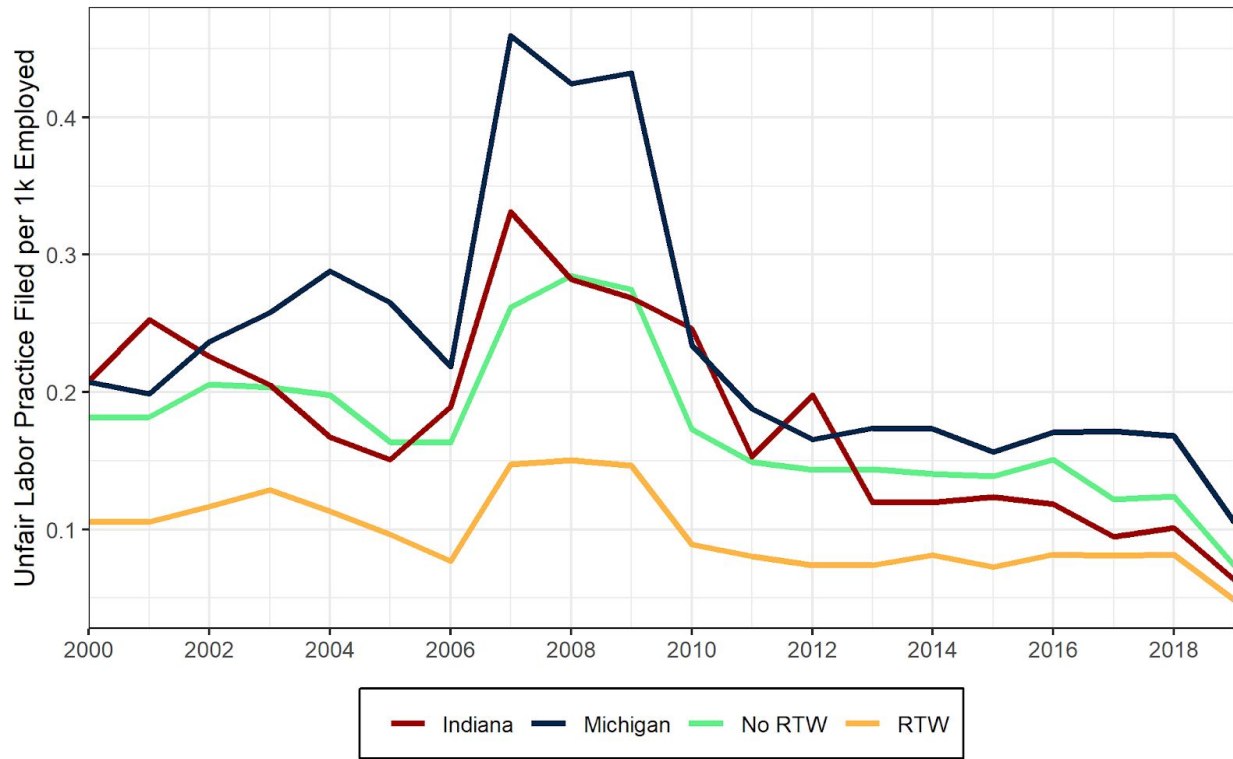
Results

In this paper I have motivated the potential for understanding the consequences of right-to-work laws on Labor through the lens of ULP charges. Past studies suggest that conventional union activity is impeded by RTW, but these works have not been able to operationalize union activity beyond wage premiums and coverage rates, or do not systematically assess effects on conventional activity throughout time and place. With this unique dataset of all ULP charges at the NLRB from 2000 to 2019, I demonstrate the disparate strategies employed by unions in ULP behaviors as well as the significant barriers that RTW presents in the protection of employees in the U.S. The following results are reported in order of depth to identify not just trends absent of strategy, but to build toward the value of filing unfair labor practice in terms of Labor's response to anti-union legislation. First I demonstrate the effect of RTW on general usage of ULP in terms of counts. This simple model prompts attention to the filing behaviors across all states that adopt RTW in the period of 2000 to 2019. Next, I

highlight the trends in unfair labor practice in union strongholds of Michigan and Indiana who both adopted the law in 2012. These states demonstrate different changes to unfair labor practice as a result of RTW leading to implications in strategy. Lastly, I show the success of such strategies and the association between union power, coalition building, and unfair labor practice filing behaviors.

The outcomes of interest are the trends in counts of filing unfair labor practice charges at the NLRB, the success of these charges, and the content of the charges in terms of charging party composition. In Figure 2, I provide the trend in counts of unfair labor practice charges filed against employers per 1,000 employed individuals in Michigan and Indiana compared to the average counts of charges for states that have had RTW since before 2000 and states whom have not enacted the law during the sampling period of 2000 to 2019. These lines draw attention to two comparisons of interest moving forward in the analysis. First, the Great Recession is associated with a spike in charges filed, particularly for workers in Michigan. This spike in charges filed may be surprising given the steady decline in elections at the NLRB shown in Milkman and Luce (2017), but the benefits of unfair labor practice remedies for protecting employment status and consistent pay outlined in the literature review illustrate the value that unfair labor practice filings have during times of strife. This spike might also be interpreted as coinciding with the 2008 election where the narrative around the Obama administration suggested a reclamation of union strength in the United States (Minchin 2016). While right-to-work presents a far different condition of hardship, there is some precedent for using unfair labor practice in Indiana and Michigan against larger disadvantageous contexts.

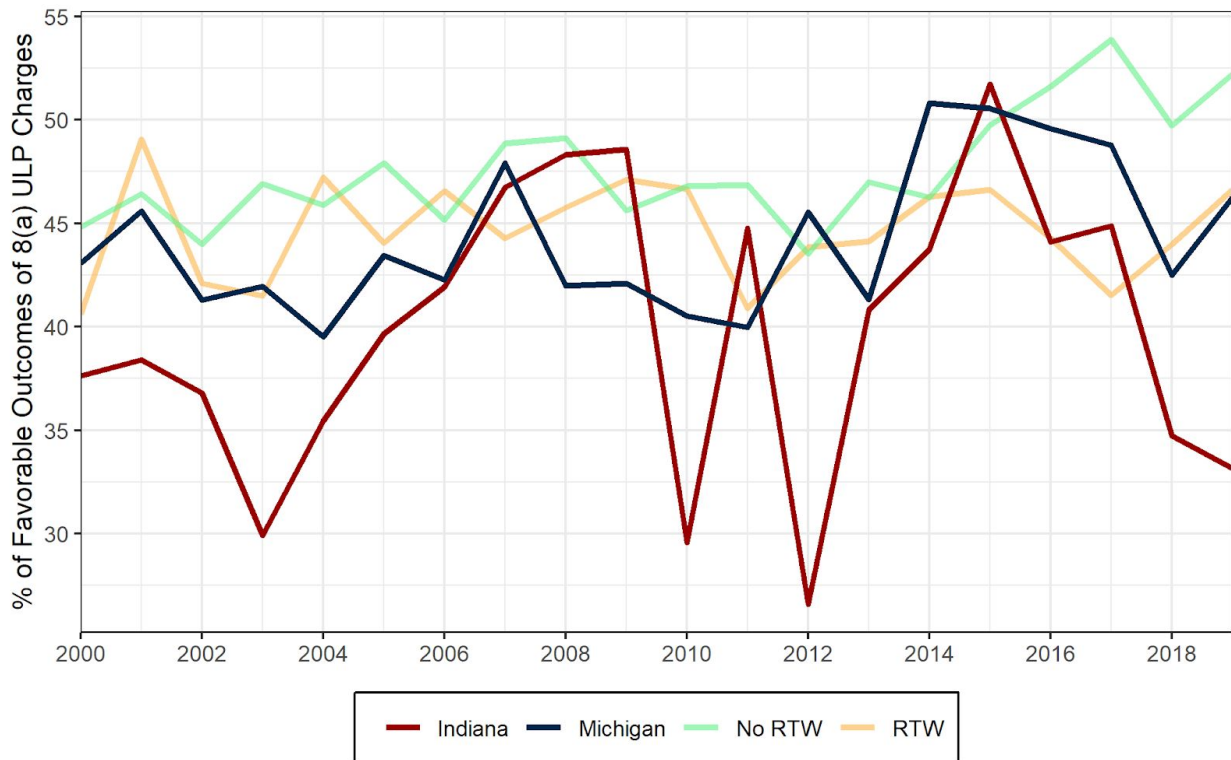
Figure 2.



The success of unfair labor practice filings is of particular importance to this analysis because the efficacy of NLRB case procedure is questionable in the eyes of Labor (Fantasia 1988, Dannin 2006). For the purposes of this research, a “success” is when the charged party (employer) adjusts their behavior, informally settles, or formally settles the case either through Board decisions or Administrative Law Judge decisions. While there are legitimate criticisms of the strength of these remedies once NLRB decisions have been rendered (Bronfenbrenner 2009), this operationalization recognizes the victories as legal objectives. Due to the lack of follow-up data from the NLRB on cases post-decision, I am unable to determine whether remedies were weak in application. Looking over Figure 2, it is apparent that despite the relatively flat distribution of case counts with the exception of the Great Recession spike. In Figure 3, the success of cases shows greater variation across categories. For Indiana, at times there is less than

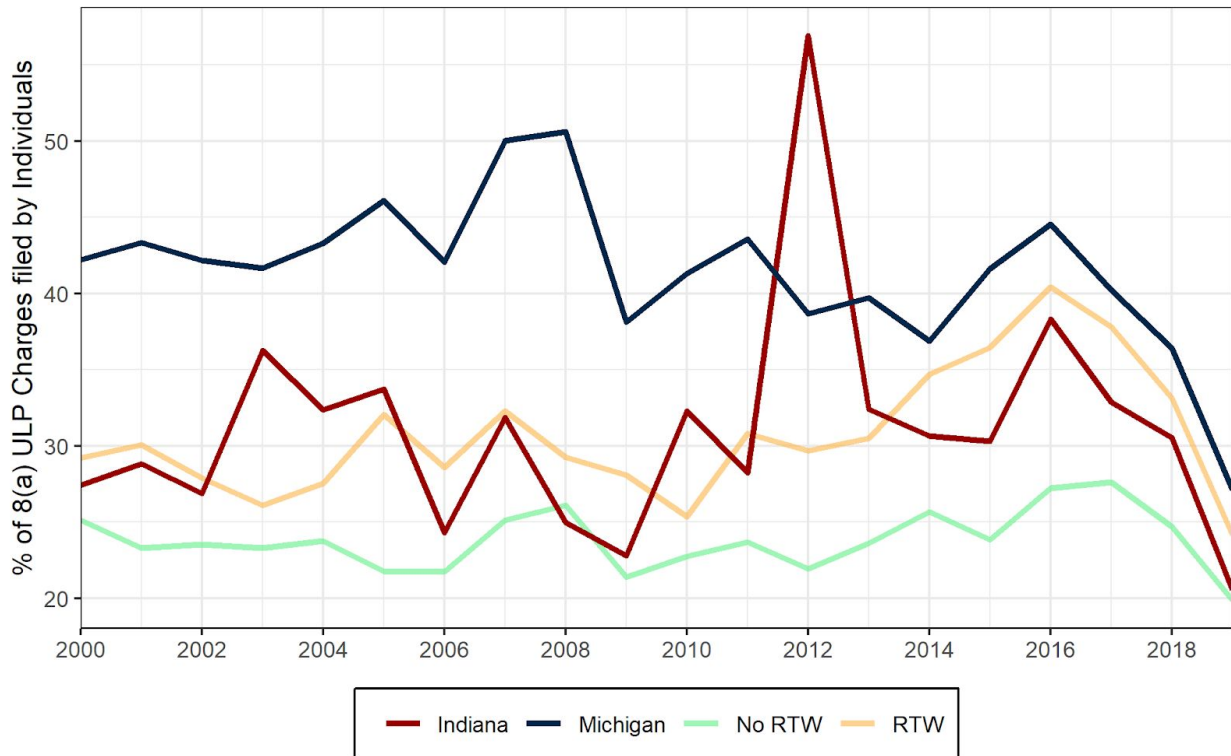
one quarter of cases resulting in a favorable outcome for the worker(s) who filed the charge, and at other times over half of the cases result in favorable outcomes. In Michigan, there is far less volatility in the percentage of successful cases, and the content of these cases that grant their success warrants further explication through the following analyses. The average rates of success for both RTW states and non-RTW states suggests that the NLRB seemingly approaches the provision of remedies and meriting of cases similarly across the time period of 2000 to 2019. However the discrepancy between successful cases during the Trump administration between RTW states and non-RTW states may be related to the lean of Board appointees as shown by existing work (see Semett 2016). The success of unfair labor practices in aggregate illustrate the adoption of forms in both Michigan and Indiana.

Figure 3.



The composition of charging parties varies across space and time as well. In Figure 4, I illustrate the percentage of cases filed by individuals for Michigan and Indiana compared to the average percentage of cases filed by individuals for RTW states and non-RTW states. The percentage of individuals who file charges appear to follow similar trends for most years with the exception of Michigan during the Great Recession and Indiana in 2012 as RTW passed in that state. Additionally, unfair labor practice filings become less commonly filed by individuals in 2018 and 2019. Each of these outcomes: the amount of cases, the success of cases, and the composition of who filed the charge are used to demonstrate the change in strategy around filing unfair labor practice as right-to-work is enacted.

Figure 4.



All States Comparison

There is a heap of evidence demonstrating how RTW impedes union organizing, and the evidence presented by these scholars frequently illustrates changes in terms of elections at the NLRB (Goldfield 1986, Ijose 1989, Moore 1998, Weiler 2019). There is little research that investigates the effect of right-to-work on the other NLRB provision, filing ULP charges. While other studies may imply that ULP behaviors change with the passage of right-to-work there is little evidence to support this suggestion. By orienting the analysis toward the trends in unfair labor practice, it becomes clear that there is a systematic difference in how ULP filings are associated with the passage of RTW laws. I fit a mixed effects negative binomial model to illustrate that enacting right-to-work is related to lower counts in unfair labor practice.

Figure 5.

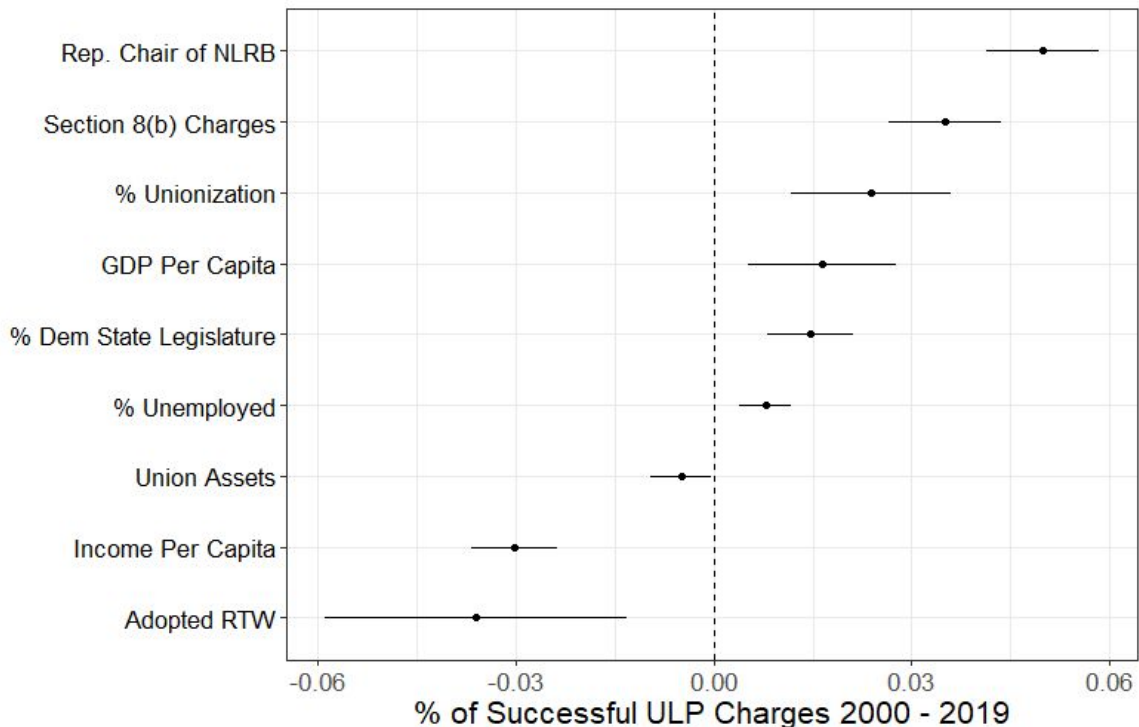
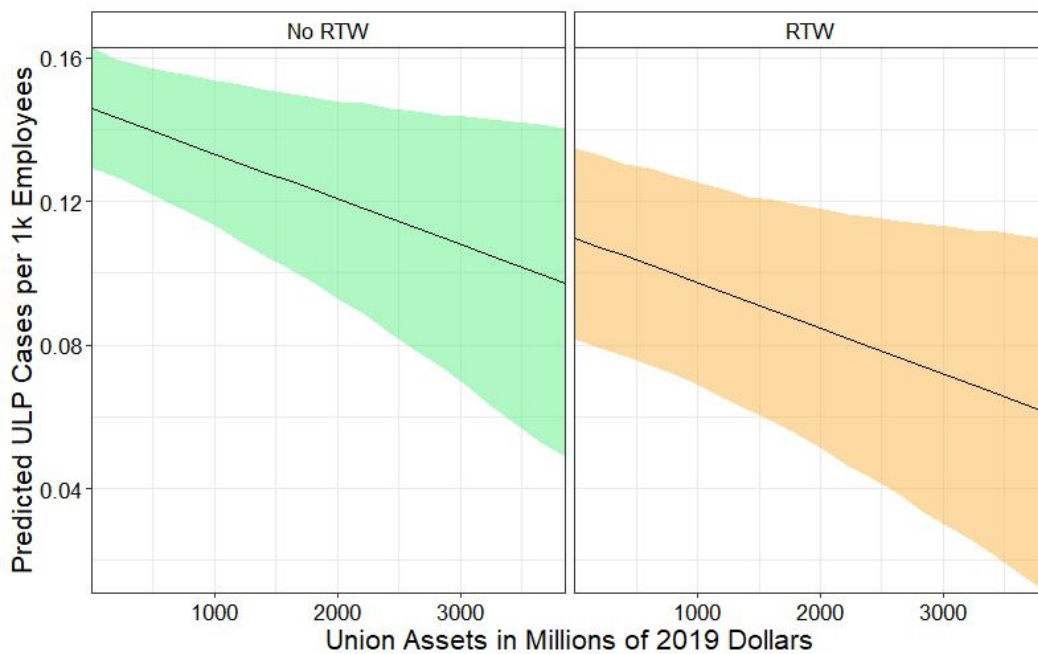


Figure 5 shows the coefficients of my mixed effects negative binomial model. The coefficients are standardized for comparison and use robust standard errors. There is a negative

effect (-0.36 counts) of adopting RTW on the counts of unfair labor practice per 1,000 employed for all states who adopted the law during the data collection period of 2000 - 2019. The states that adopted RTW that impacted private sector workers were Michigan and Indiana in 2012, Wisconsin in 2015, West Virginia in 2016, and Kentucky in 2017. The outcome presented in this figure are the counts of unfair labor practice per 1,000 employed persons. These results are substantively the same for 1,000 people in the population, but given the utility of ULP to workers, choosing employment for the rate keeps workers as the focus of the model. I find partial support for H1 - larger union resources are associated with lower unfair labor practice especially in RTW states. Larger union resources are slightly associated (-0.005 counts) with lower amounts of ULP charges, however, there is no significant difference between states with RTW and those without. These findings are highlighted in Figure 6 where I demonstrate the predicted amount of ULP cases across union assets in states with and without RTW.

Figure 6.



The covariates in this mixed effects negative binomial model prompt larger questions around the positionality of unions engaging in ULP usage. The percentage of unionized employees is significant at the .05 level and yields a coefficient of 0.24 counts of unfair labor practice per 1,000 employed individuals. The per capita income covariate yields a strong, statistically significant coefficient of -0.03 counts of unfair labor practice. The percentage of unemployment is associated with .007 more counts of ULP per 1,000 employed individuals and significant at the .05 level. These two economic condition findings are in line with the notion suggested by Clawson and Clawson (1999) that union protections are successful when they keep people employed and well paid. When both of those economic pieces are at high levels, there are less uses for the ULP tool to enforce employment and higher wages. GDP is related to a coefficient of 0.02 unfair labor practice charges per 1,000 employed individuals and is statistically significant at the .05 level. This coefficient tracks on to the line of research that describes GDP not as a measurement of economic prosperity, but rather a measurement of economic exploitation in terms of land, workers, and resources (Colic-Peisker 2017). When seen in those terms, GDP is related to greater worker exploitation which may be demonstrated in the form of ULP perpetrated by employers.

Lastly, the political covariates yield significant positive results. There is evidence that conservative members of the NLRB's top five positions at the board are associated with more pro-business decisions on high-level ULP cases (Rainey 2015, Semett 2016). However, this evidence concerns the top level Board decisions which makes just 1.3% of all cases in this dataset. The position of a Republican appointed chair of the NLRB is a consequence of Republican presidential administrations, which are historically hurtful to union organizing.

However counts of ULP appear to rise along with the administration of Republican appointees. Rosenfeld (2014) shows that state level politics are generally considered the driving force in unionization rates. State level legislative composition with higher percentages of Democrats appears to be related to higher unfair labor practice filings. This is likely due to the more pro-union bent of Democrats.

The results of the mixed effects negative binomial regression on counts of unfair labor practice suggest that adopting right to work leads to lower counts of filing charges. The coefficient is -0.04 and is significant at the .05 level. This effect is net of economic conditions, political context, union resources, time-invariant variables, and characteristics specific to each state. This modeling strategy, while suggestive, does not offer a glimpse into the changes in behavior around unfair labor practice, the content of the charges, or the efficacy of the change on union provisions. Instead, this strategy only suggests that there are less ULP charges. Therefore, I turn to using the synthetic control method to identify these characteristics of trends in filing unfair labor practice particularly in the cases of Indiana and Michigan.

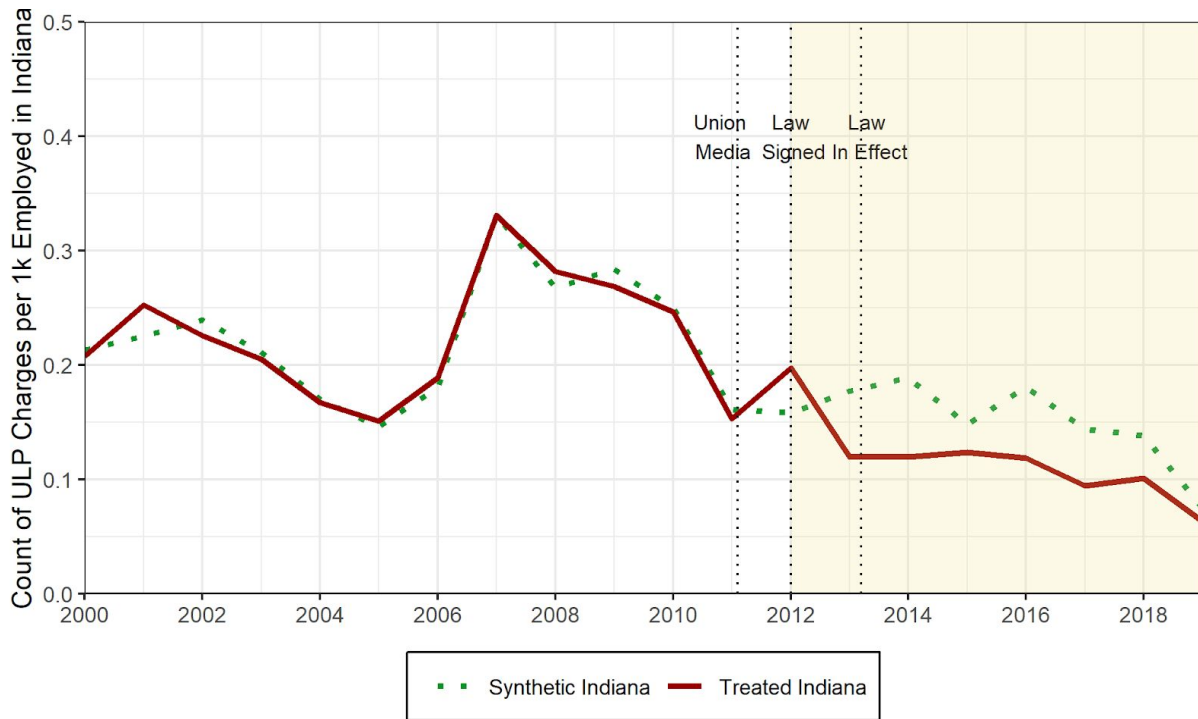
I implement the synthetic control method to assess the rates of filings in treated states relative to what rates might be expected if these states (Michigan and Indiana) never enacted RTW. In all synthetic control figures, I include vertical dotted lines to illustrate some uncertainty around when the effect of the treatment takes place. The first dotted line labelled “Union Media” describes the earliest time a union made a statement about the potential of right-to-work to be implemented in their state. The second line denotes when the law was signed by the governor. The last line shows when the law takes effect. The effect of right-to-work on union security agreements is contingent on expiring contracts which may not occur for some years after the law

is implemented (Dixon 2006, VanHeuvelen 2020). However, I am assessing the change in filing behaviors. Strategy around filing may occur before the law is signed or after. The synthetic counts of unfair labor practice are drawn with a dashed line. The lines were derived by calculating what weights for control states and combination of variables minimizes the mean-squared predictive error (MSPE). The MSPE is reported per each figure.

Indiana

Synthetic Indiana is constructed in order to provide a counterfactual comparison to the actual ULP charges filed at the NLRB. The results of the synthetic control method on counts of ULP charges in Indiana are demonstrated in Figure 7. At the time of the law being signed, the unfair labor practice filings appear to be higher than the expected counts. In synthetic Indiana, the model expected 0.16 ULP charges per 1,000 employed individuals, but Treated Indiana had 0.19. The Average effect of the Treatment on the Treated (ATT) where the null hypothesis is no effect and the alternative hypothesis is the counterfactual value either being higher or lower than the null suggests that there is no meaningful effect on the count of charges with an effect of 0.04 and a standard error of 0.05. The standard errors around the estimation of synthetic Indiana are bootstrapped 1,000 times. These trends offer no support for the *H2 - right-to-work causes unfair labor practice filings to increase in the short term, and eventually regress to similar trends as long time right-to-work states*. While rates seem to reflect support H2, further investigation into the content of the charges is necessary. Next, I demonstrate the changes in trends of the outcomes of unfair labor practice charges.

Figure 7.

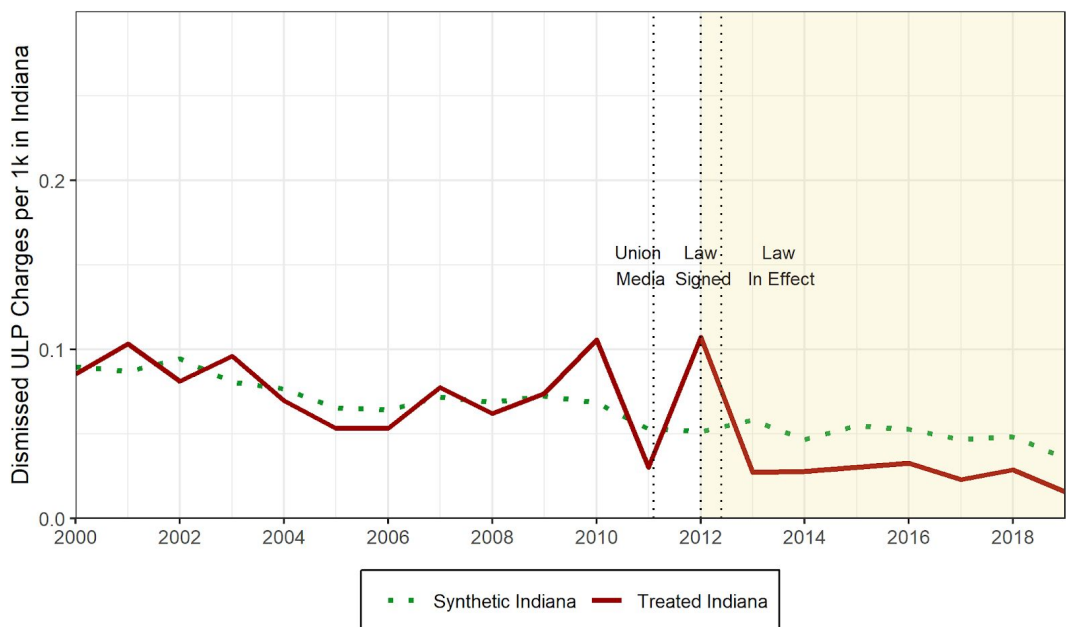


MSPE = 0.0066

To assess the outcomes I move to describing the outcomes of unfair labor practice cases that incur different decisions and involved parties. In Figure 8, I implement the synthetic control method on the outcome of unfair labor practice cases that were dismissed. Dismissals are cases where the NLRB has received an unfair labor practice case file, reviewed the relevant evidence, and found the case to have no merit under the Act. The increase that I identified in the counts model is reiterated in the dismissal cases with a noted difference in the post-treatment time. The percentage of cases that are dismissed by the NLRB is significantly higher in the year the law is signed, the ATT is 0.05 (standard error: 0.01) in 2012. In the following years, from 2013 to 2019 the estimated average treatment effect is -0.03 and is significant at the .05 level (p value = 0.03). While the aggregate measure of total ULP charges did not offer support for *Hypothesis 2 - right-to-work causes unfair labor practice filings to increase in the short term, and eventually regress to similar trends as long time right-to-work states*, the uptick in the cases that are

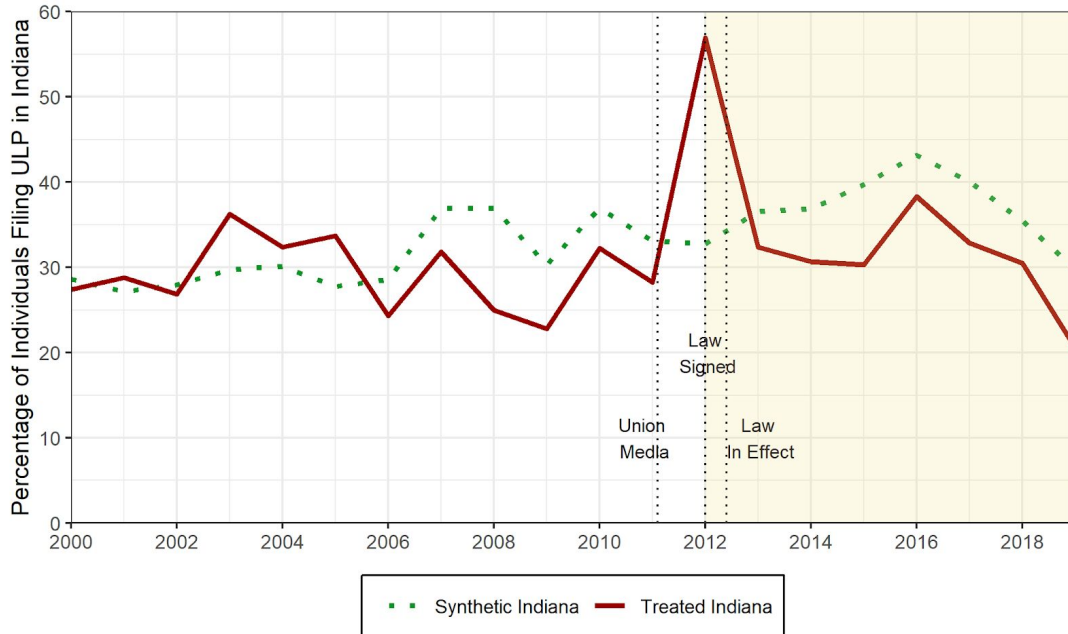
dismissed rather than investigated points out the way RTW impedes union activity. In Indiana, workers filed ULP to protect union provisions as RTW was shoved through the legislature and a statistically significant amount of these cases were dismissed outright with no investigation. Further, the trends in who, either an individual or union(s), is in the charging party changes as a result of right-to-work. In Figure 9, I illustrate the synthetic control method on the outcome of percentage of individuals filing ULP. In 2012, the ATT is 24.19% (standard error: 6.3). Relative to the synthetic Indiana (i.e. a counterfactual Indiana without RTW), the Treated Indiana had a rate of individuals filing ULP that was 24 percentage points higher than expected. In Indiana, the year RTW was adopted almost 2 out of 3 ULP cases were filed by individuals when historically that figure is approximately 1 out of 3. For each of these outcomes in Indiana there is a change in the usage of ULP charges being filed and a lack of support from the NLRB as RTW is adopted.

Figure 8.



MSPE = 0.0006

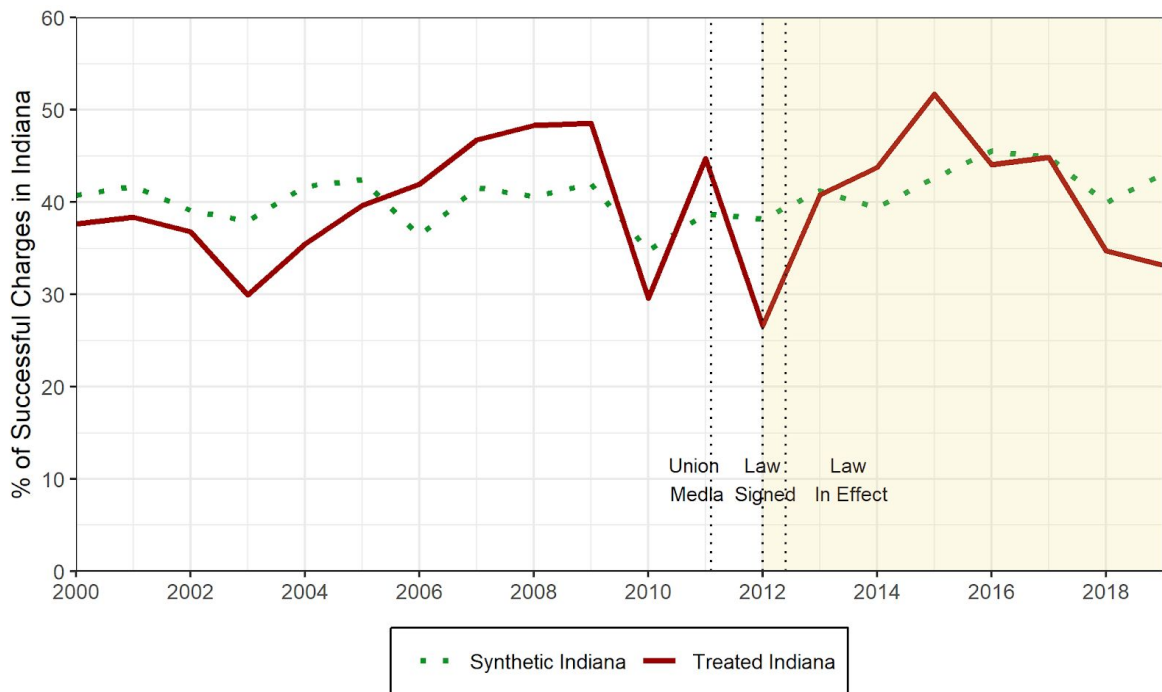
Figure 9.



MSPE = 115.7608

Figure 10 shows the rates of successful unfair labor practice filing in Indiana. The Treated Indiana does not follow Synthetic Indiana closely. The percentage of cases that are successful seems to be less common in 2012, but this ATT is not significant at the .05 level. There is no change in the rate of the different types of allegations due to RTW. As an example of how well the counterfactual and treated Indiana trends overlap, I have provided an implementation of the synthetic control method for each of the five allegations in the Appendix. The usage rates of each of these five allegations are not significantly different from what we would expect if Indiana did not enact RTW.

Figure 10.

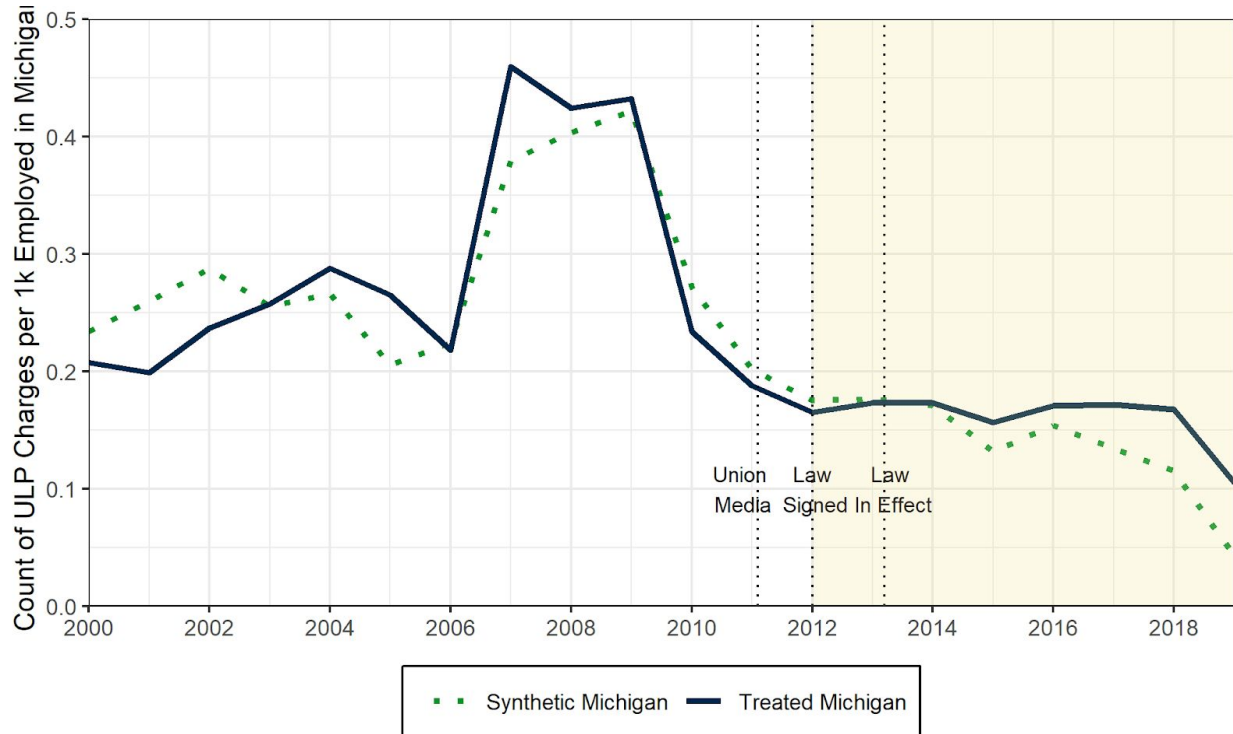


MSPE = 43.39799

Michigan

Synthetic Michigan is constructed in the same manner as the Indiana models. The results of the synthetic control method on counts of unfair labor practice in Michigan are demonstrated in Figure 11. Notably, the trends of unfair labor practice remain similar between the synthetic and treated Michigan lines. These trends suggest no support for any of the proposed hypotheses. Just after the law is signed, the rate of unfair labor practice is similar to the expected counts. Therefore, I find no supporting evidence of the so-called steamroller effect or *H3: As a result of right-to-work laws, unfair labor practice rates drop dramatically.*

Figure 11.

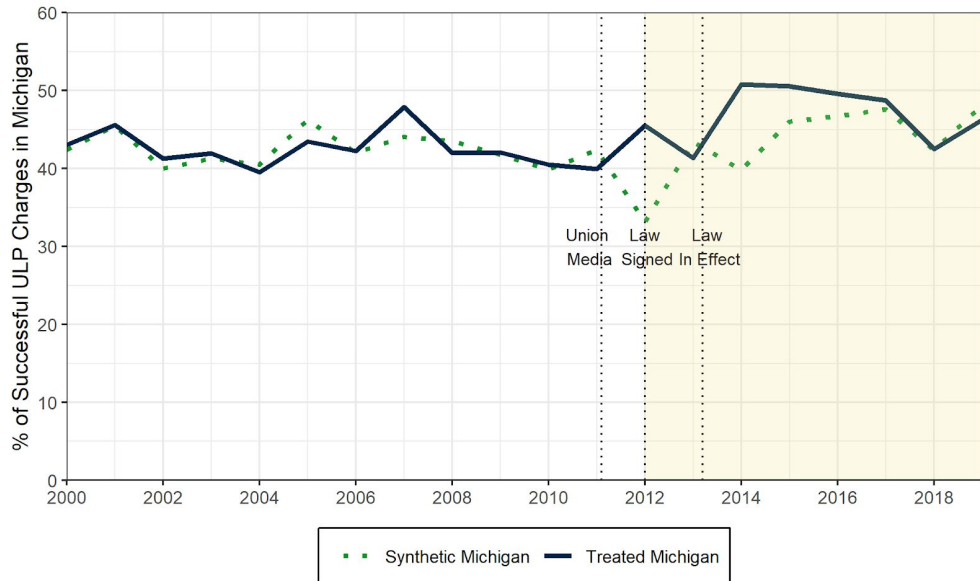


MSPE = 0.00235

Next we move to assessing the outcomes of unfair labor practice charges in Michigan. In Figure 12, I implemented the synthetic control method on the outcome of unfair labor practice cases that were favorable to the employee(s) filing the charge. There appears to be a slightly larger rate of success in 2012 and 2014, however these differences are not significant. I also calculated the dismissals of cases by the NLRB. After the law has been signed the trends in cases that fail to be merited by the NLRB appear to remain similar to the counterfactual trend. Michigan is quite different in trends than Indiana across their own counterfactual comparisons. In fact, to make sense of the impact of RTW on this conventional union activity, I show the synthetic control method implemented on the charging parties in the ULP charges. In Michigan,

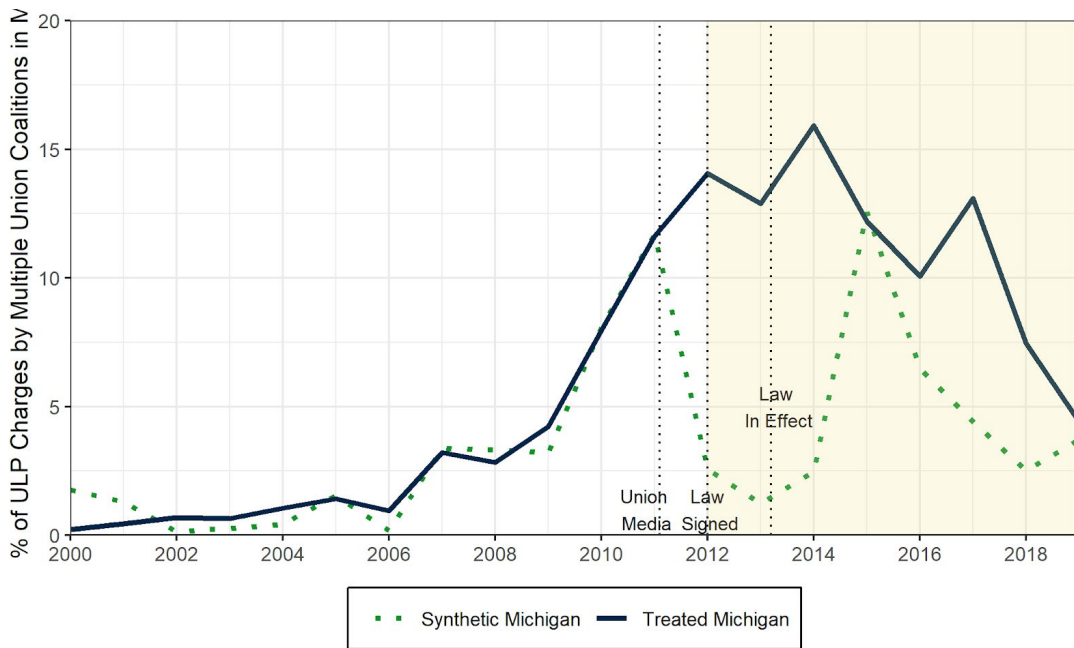
in response to the signing of RTW, there are far more charges that involve multiple large union organizations. I illustrate in Figure 13 that charges with at least two unions on the charging party become more common in the post-treatment time the average treatment effect after the law is in effect is 6.76% (se: 1.97) which is significant at the .05 level (p value: 0.004). In the year the law is signed the ATT is 11.495 (se: 5.2) which is not significant at the .05 level (p value: 0.07). In 2017, coalition building became significantly prevalent as the ATT is 8.65 (se: 3.88). In the post-RTW adoption years in Michigan, coalition building in the filing of ULP abounds. However, these trends of coalition charges fall to be more in line with the synthetic rates of coalition charging parties in 2018 and 2019, perhaps illustrating the lack of available unions who could form coalitions has diminished by that time.

Figure 12.



MSPE = 5.74848

Figure 13.



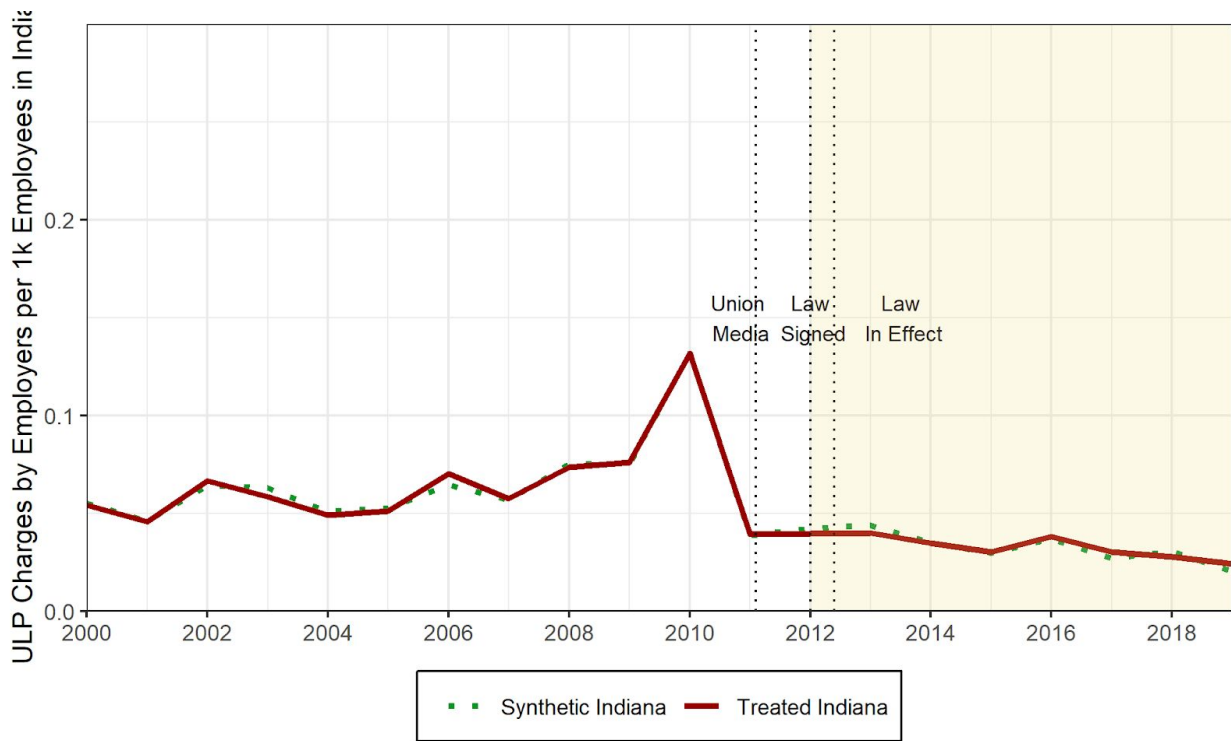
MSPE = 1.01603

The content of the charges in terms of allegations in Michigan from 2000 to 2019 appear to follow a similar insignificant relationship between treated and counterfactual trends. The rates of cases alleging any of the five allegation types match well on to the counterfactual Michigan with the exception of cases alleging 8(a)(2) - domination or interference in labor organization. In Figure 16, it is clear that the treated Michigan saw lower counts of charges for domination or interference charges but there are so few of these charges in general, that I approach this finding with caution due to the low counts generally.

While the focus of this article is on the employees who utilize unfair labor practice filings and how these usages change with the implementation of right-to-work, I have also included changes to 8(b) filings--charges by employers. It is often described in the literature that right-to-work signals a pro-business environment, and what “pro-business” environments mean

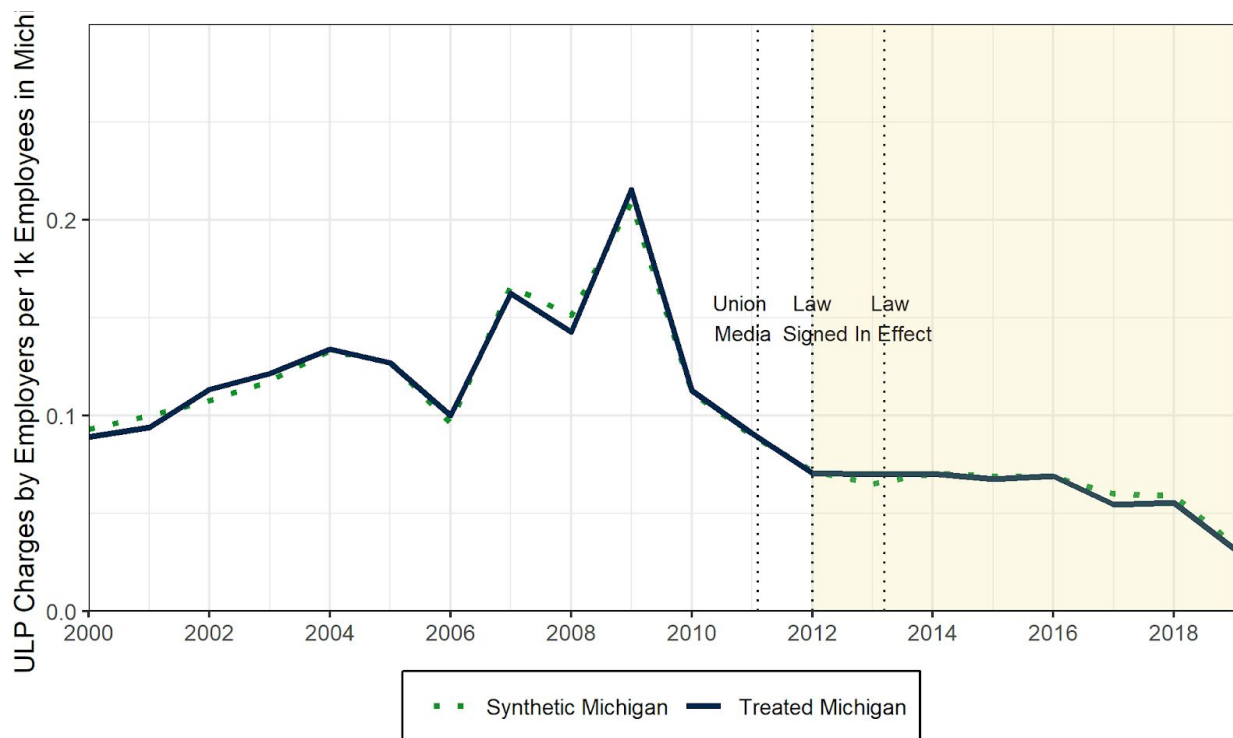
in terms of employer filing is not widely defined by data elsewhere (Semett 2016). For both Michigan and Indiana, the real world rate of 8(b) charges remain virtually the same as the synthetic controls expect. There may be a lack of utility given that both states are still union strongholds despite right-to-work passing. In different states without a large union presence, right-to-work’s signal of a “pro-business” environment may be stronger. Future work is necessary to make sense of the rate of 8(b) charges.

Figure 14.



MSPE = 0.0003

Figure 15.



MSPE = 0.00007

There are a few limitations of these models that are important to cover before moving to discussion of these results. First, the synthetic control method seeks to overlap pre-intervention trends for synthetic control and treated units nearly exactly. For models that assessed percentages of success, this condition is not as clearly precise as the other models that assessed counts. Second, it is not certain that there is non-interference between the treated units. While there appears to be significant differences in the usage of ULP between Indiana and Michigan, the proximity of these states and their proclivity to interstate commerce may contaminate practices across states. By using two states that both received the law in 2012, I attempted to bypass this

issue of unit-interference because decisions were made at the same time, however the intermingling of these decisions is uncertain without closer, qualitative evidence.

Discussion & Conclusion

Right-to-work laws increase barriers to organizing Labor throughout the U.S. To date, few have identified the consequences of RTW on union power in terms of the affirmative protections and actions that unions provide for their members (Wilmers 2017, VanHuevelen 2020). In this research I identify the changes in strategy and success of unfair labor practice charges at the NLRB in the wake of the adoption of right-to-work laws. I find that as resources available to unions grow, the rate of ULP cases falls regardless of RTW status. This finding highlights the tension for Labor between using the NLRB and the efficacy of the NLRB's remedies. On one hand, the strong language of the Wagner Act offers de jure protection. On the other hand, Labor would prefer to settle issues between themselves and the employer. This dilemma is complicated as RTW is adopted because it diminishes the resources available to unions thereby weakening access to the preferred methods of bargaining. The focal cases show two possible responses to this dilemma. For Indiana, there is a large increase in individuals filing ULP as RTW is adopted, and the majority of those charges going unmerited reinforcing the narrative of a lack of efficacy in the NLRB ULP system. In Michigan, rates appear to be the same in terms of ULP, but the content of these charges shifts toward coalition building. These results demonstrate that RTW disrupts the typical usage of ULP, which is a primary means of protecting collective bargaining agreements, workers' employment status, and organizing practices at large.

Many papers have shown that RTW is difficult to identify as a causal effect on downstream outcomes like income inequality, political participation, and so on, but these works tend to suggest RTW's immediate, suppressive effect on union power in terms of unionization (Kogan 2017, Feigenbaum et al 2018). This effect on union power is often relegated to appendix information, and brief explanation without delving into the content of how union power is directly disrupted by RTW laws. In this paper I have shown that the steamroller effect of RTW suggested in the literature is not found in the activity of filing ULP. The steamroller effect suggests that unions are without power to respond to the barriers presented by RTW. In contrast, I show that Labor responds to these laws using conventional union provisions under the Wagner Act in a more nuanced manner. Particularly, in Michigan, the effect of RTW on ULP filings required some lagged time for union security agreements to be up for bargaining before filing strategies changed.

More importantly, this research shows how unions reoriented their usage of ULP filings in response to RTW to gain purchase on their bargaining rights while the rights are being diminished. The frontline victims of the law either innovated their charges by building coalitions which prompted favorable outcomes, or without support of larger unions or indeed some locals, the charges incurred great losses. This contrast in ULP behaviors between Indiana and Michigan suggests an upstream issue in identifying the effect of RTW on broader outcomes. ULP charges are a means to protect union premiums, and with such disparity in how those charges are faring in these focal states in the wake of RTW, it becomes clear that RTW functionally impedes unions in quite different ways across states. Settling for unionization as a recognition of labor

power may mislead researchers investigating downstream outcomes without first acknowledging how the frontline victims of these laws protect their interests.

Fantasia (1988) describes how creativity in organizing fosters solidarity among workers. And, these strategies of shifting legal mobilization to larger organizations while simultaneously engaging in Alt-Labor community building and lobbying may just foster the solidarity that sustains Michigan's and Indiana's positions as Labor strongholds in the U.S. Just under half of the states in the U.S. do not have RTW laws, and understanding how RTW slows labor processes and diverts resources to actions like ULP charges shows the enduring and pervasive power of at-will doctrine employment and the precision of neoliberal policy in hurting labor organizing.

The benefits of coalition building have been demonstrated in past research regarding RTW. Dixon (2008) compares the differences in right-to-work campaigns and counter-campaigns in Ohio and Indiana during the 1950s, and describes how Indiana was left without significant support from federations and larger union organizations for counter-campaigning RTW even then. The seemingly coincidental lack of coalitions for Indiana unfair labor practice filings as RTW is to be enacted in 2012 illustrates again the fundamental value of strength in numbers for union activity. Further, Dixon describes the need for innovation to increase organizing activity in today's context. The unfair labor practices filed in Michigan are in line with these recommendations where union coalitions became more common and more successful after RTW. This method of filing is relatively innovative within the time frame 2000 to 2019. For Michigan, the rates of ULP filings with multiple larger unions as members of the charging party goes from just 5% of all employee filings in 2005 to 15% of filings in 2012. Tapping into the resources of groups like the AFL-CIO becomes more common, but the benefits

of such coalitions only serve to *maintain* aggregate success rates similar to those pre-RTW. Milkman and Luce (2017) suggest that in the post Great Recession era, innovation in organizing strategy is key to rebuilding Labor in the U.S. While these scholars offer alt-Labor as a potential future for Labor to regain New Deal era strength and coverage, identifying systematic data to demonstrate this potential remains difficult. The findings I present are in line with the virtue of the imagined future offered by Milkman and Luce, where union power is not isolated to specific industries, but rather finds solidarity across lines of difference and opportunities. Seeking shared power, indeed union power, through coalition building is foundational to Labor, and applying this concept to unfair labor practice filings illustrates the potential benefits of an alt-Labor moving forward, particularly in a context strong employer opposition to organizing in any format (Bronfenbrenner 2009).

The research presented here offers some insight into the challenges presented to Labor in the wake of RTW, however more work must be done in this area. My analysis hinges on the conception of strategy as a residual explanation of aggregate data. Qualitative research on the history of right-to-work in Indiana and Michigan leading up to 2012 and the organizing against employer practices can more precisely illuminate this phenomenon (Smith 2001). Numerous works describe right-to-work as the death knell of organizing in states and that further innovation in organizing activity is needed (Hogler 2015, Devinatz 2015, Kogan 2017). Indeed further innovation in strategy is needed, but this strategy must extend beyond NLRA based concepts of Labor. Notions of Alt-Labor (Milkman & Luce 2017), new forms that move beyond weakened corporatist organizations (della Porta 2015), or alternatives to bureaucracy (Polletta 2013) are

currently mobilizing, and may facilitate distinct responses to right-to-work away from changes in traditional union activity.

Works Cited

- Abraham, Steven E., and Paula B. Voos. 2000. "Right-to-Work Laws: New Evidence from the Stock Market." *Southern Economic Journal* 67(2):345–345.
- Antoine, Theodore J. St. 1998. "How the Wagner Act Came to Be: A Prospectus." *Michigan Law Review* 96(8):2201.
- Babson, Steve. 1986. *Working Detroit: The Making of a Union Town*. Detroit: Wayne State University Press.
- Bronfenbrenner, Kate. 2009. "The Intensification of Employer Opposition to Organizing." 33.
- Bruno, Robert, Roland Zullo, Frank Manzo, and Alison Dickson. 2015. "The Economic Effects of Adopting a Right-to-Work Law." *Labor Studies Journal* 40(4):319–61.
- Cantin, Étienne. 2012. "The Politics of Austerity and the Conservative Offensive against US Public Sector Unions, 2008-2012." *Relations Industrielles* 67(4):612–32.
- Clawson, Dan, and Mary Ann Clawson. 1999. "WHAT HAS HAPPENED TO THE US LABOR MOVEMENT? Union Decline and Renewal." *Annual Review of Sociology* 25(1):95–119.
- Colic-Peisker, Val. 2017. "Ideology and Utopia: Historic Crisis of Economic Rationality and the Role of Public Sociology." *Journal of Sociology* 53(1):145–61.
- Collins, Benjamin. 2013. "Right to Work Laws: Legislative Background and Empirical Research." *Right to Work Laws and Federal Labor Relations Statutes: An Overview* 1–19.
- Cooke, William N., and Frederick H. Gautschi III. 1982. "Political Bias in NLRB Unfair Labor Practice Decisions." *ILR Review* 35(4): 539-549.
- Dannin, By Ellen I. 1993. "Labor Law Reform — Is There a Baby in the Bathwater ?" 626–32.

- Dannin, Ellen J. 1999. "Using the NLRB as a Resource." *Labor Studies Journal* 24(3):38–53.
- Dannin, Ellen J. 2006. *Taking Back the Workers' Law: How to Fight the Assault on Labor Rights*. Ithaca, N.Y: ILR Press/Cornell University Press.
- Della Porta, Donatella. 2015. *Social Movements in Times of Austerity: Bringing Capitalism Back into Protest Analysis*. Cambridge, UK ; Malden, MA: Polity.
- Devinatz, Victor G. 2015. "Right-to-Work Laws, the Sounthernization of U.S. Labor Relations and the U.S. Trade Union Movement's Decline." *Labor Studies Journal* 40(4):297–318.
- Dixon, M. 2008. "Movements, Countermovements and Policy Adoption: The Case of Right-to-Work Activism." *Social Forces* 87(1):473–500.
- Dixon, Marc. 2010. "Union Threat, Countermovement Organization, and Labor Policy in the States, 1944–1960." *Social Problems* 57(2):157–74.
- Duff, Michael C. 2009. "Embracing Paradox: Three Problems the NLRB Must Confront to Resist Further Erosion of Labor Rights in the Expanding Immigrant Workplace." *Berkeley Journal of Employment and Labor Law* 30(1):133–92.
- Elliott, Ralph D., and James R. Huffman. 1984. "The Impact of Right-to-Work Laws on Employer Unfair Labor Practice Charges." *Journal of Labor Research* 5(2):165–76.
- Ellwood, David T., and Glenn Fine. 2017. "The Impact of Right-to-Work Laws on Union Organizing Author (s): David T . Ellwood and Glenn Fine Source : Journal of Political Economy , Vol . 95 , No . 2 (Apr . , 1987), Pp . 250-273 Published by : The University of Chicago Press Stable URL : [Http://.](http://.)" 95(2):250–73.
- Eren, Ozkan and Serkan Ozbeklik. 2011. "Right-to-Work Laws and State-Level Economic Outcomes : Evidence from the Case Studies of Idaho and Oklahoma Using Synthetic Control Method." (702).
- Fantasia, Rick. 1989. *Cultures of solidarity: consciousness, action and contemporary American workers*. paperback print. Berkeley, Calif.: Univ. of California Press.
- Farber, Henry S. 1984. "Right-To-Work Laws and the Extent of Unionization" *Journal of Labor Economics*. 2(3): 319-352.
- Feigenbaum, James, Alexander Hertel-Fernandez, and Vanessa Williamson. 2018. "From the Bargaining Table to the Ballot Box: Political Effects of Right to Work Laws." *NBER Working Paper* No. 24259:70–70.
- Feinman, Jay M. 1976. "The Development of the Employment at Will Rule." *American Journal of Legal History* 20(2):118–35.

- Fisk, Catherine L., and Deborah C. Malamud. 2009. "The NLRB in Administrative Law Exile: Problems with Its Structure and Function and Suggestions for Reform" *Duke Law Journal*. 58: 2013-2085.
- Galiatsos, Caroline B. 2015. "Beyond Joint Employer Status: A New Analysis for Employers' Unfair Labor Practice Liability under the NLRA." *Boston University Law Review*. 95:34.
- Getman, Julius G. 2010. *Restoring the Power of Unions: It Takes a Movement*. New Haven [Conn.]: Yale University Press.
- Goldfield, Michael. 1989. *The Decline of Organized Labor in the United States*. Paperback ed. Chicago: Univ. of Chicago Press.
- Hartley, F. A., and R. A. Taft. 1948. *Our New National Labor Policy: The Taft-Hartley Act and the Next Steps*. Funk & Wagnalls Company.
- Herrick, Elinore M. 2007. "The National Labor Relations Act." *The ANNALS of the American Academy of Political and Social Science* 248(1):82–90.
- Hogler, Raymond L. 2015. *The End of American Labor Unions: The Right-to-Work Movement and the Erosion of Collective Bargaining*. Santa Barbara, California: Praeger.
- Hogler, Raymond, Steven Shulman, and Stephan Weiler. 2004. "Right-to-Work Legislation, Social Capital, and Variations in State Union Density." *Review of Regional Studies* 34(1):95–111.
- Ijose, Olumide Adebola. 1989. "A Pooled Cross-Sectional and Time Series Analysis of the Determinants of Union Growth in the United States: 1970-1980." Dissertation, The Ohio State University.
- Jacobs, David, and Marc Dixon. 2006. "The Politics of Labor-Management Relations: Detecting the Conditions That Affect Changes in Right-to-Work Laws." *Social Problems* 53(1):118–37.
- Jacobs, David, and Lindsey Myers. 2014. "Union Strength, Neoliberalism, and Inequality: Contingent Political Analyses of U.S. Income Differences since 1950." *American Sociological Review* 79(4):752–74.
- Kaminski, Michelle. 2015. "How Michigan Became a Right to Work State: The Role of Money and Politics." *Labor Studies Journal* 40(4):362–78.
- Koeller, C. Timothy. 1992. "Employer Unfair Labor Practices and Union Organizing Activity: A Simultaneous Equation Model." *Journal of Labor Research* 13(2):173–87.

- Kogan, Vladimir. 2016. "Do Anti-Union Policies Increase Inequality? Evidence from State Adoption of Right-to-Work Laws." *State Politics & Policy Quarterly*. 17(2): 180-200.
- Lee, Sophia Z. 2014. *The Workplace Constitution from the New Deal to the New Right*. New York, NY: Cambridge University Press.
- Manzo IV, Frank. 2015. "Promises Unfulfilled: Right-to-Work's Early Economic Track Record in Indiana." *Labor Studies Journal* 40(4):379–95.
- McLaughlin, Doris B. 1970. *Michigan Labor: A Brief History from 1818 to the Present*. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan--Wayne State University.
- Miles, Thomas J. 2000. "Common Law Exceptions to Employment at Will and U.S. Labor Markets." *Journal of Law, Economics, and Organization* 16(1):74–101.
- Milkman, Ruth. 2013. "Back to the Future? US Labour in the New Gilded Age: US Labour in the New Gilded Age." *British Journal of Industrial Relations* 51(4):645–65.
- Milkman, Ruth and Stephanie Luce. 2017. "Labor Unions and the Great Recession." *RSF: The Russell Sage Foundation Journal of the Social Sciences* 3(3):145.
- Minchin, Timothy. 2017. *Labor Under Fire: A History of the AFL-CIO since 1979*. The University of North Carolina Press.
- Minchin, Timothy J. 2016. "A Pivotal Role? The AFL–CIO and the 2008 Presidential Election." *Labor History* 57(3):299–322.
- Mitchell, Daniel J. B. 1980. *Unions, Wages, and Inflation*. Washington, D.C: Brookings Institution.
- Moore, William J. 1998. "The Determinants and Effects of Right-to-Work Laws: A Review of the Recent Literature." *Journal of Labor Research* 19(3):444–69.
- Polletta, Francesca. 2013. "Participatory Democracy in Social Movements." P. 442 in *The Wiley-Blackwell Encyclopedia of Social and Political Movements*, edited by D. A. Snow, D. Della Porta, B. Klandermans, and D. McAdam. Oxford, UK: Blackwell Publishing Ltd.
- Rainey, Paul L. 2015. "The National Labor Relations Act: Structuration and the Interaction of Policy and the Hermeneutics of Case Law." Dissertation, Indiana University of Pennsylvania.

- Rao, Hayagreeva, Lori Qingyuan Yue, and Paul Ingram. 2011. "Laws of Attraction: Regulatory Arbitrage in the Face of Activism in Right-to-Work States." *American Sociological Review* 76(3):365–85.
- Rosenfeld, Jake. 2014. *What Unions No Longer Do*. First Edition. Cambridge, Massachusetts ; London, England: Harvard University Press.
- Rosenfeld, Jake. 2019. "US Labor Studies in the Twenty-First Century: Understanding Laborism Without Labor." *Annual Review of Sociology* 45(1):449–65.
- Secunda, Paul M., Anne Marie Lofaso, Joseph E. Slater, and Jeffrey M. Hirsch. 2014. *Mastering Labor Law*. Durham, North Carolina: Carolina Academic Press.
- Semett, Amy. 2016. "Political Decision-Making at the National Labor Relations Board: An Empirical Examination of the Board's Unfair Labor Practice Decisions through the Clinton and Bush II Years." 71.
- Shapiro, Peter E. 2010. "Union Shops, Not Border Stops: Updating NLRB Sanctions to Help Organize Immigrant Workers after Hoffman." *Washington Law Review* 78(5):1069–85.
- Smith, Mike. 2001. "'Let's Make Detroit a Union Town': The History of Labor and the Working Class in the Motor City." *The Michigan Historical Review* 27(2):157.
- Taylor, Don. 2015. "Can Renewal Emerge from Destruction? Crisis and Opportunity in Wisconsin." *Labor Studies Journal* 40(4):396–418.
- Tilly, Chris, and Charles Tilly. 2019. *Work Under Capitalism*. 1st ed. Routledge.
- VanHeuvelen, Tom. 2020. "The Right to Work, Power Resources, and Economic Inequality." *American Journal of Sociology*. 125(5).
- Vedder, Richard. 2011. "The Economic Effects of Right to Work Laws." *Employee Responsibilities and Rights Journal* 23(4):305–10.
- Weiler, Paul. 1983. "Promises to Keep: Securing Workers' Rights to Self-Organization under the NLRA." *Harvard Law Review* 96(8):1769.
- Weiler, Paul. 1984. "Striking a New Balance: Freedom of Contract and the Prospects for Union Representation." *Harvard Law Review* 98(2):351.
- Weiner, Michael. 2005. "Can the NLRB Deter Unfair Labor Practices? Reassessing the Punitive-Remedial Distinction in Labor Law Enforcement." *UCLA Law Review*: 49.
- Zoorob, Michael. 2018. "Does 'right to Work' Imperil the Right to Health? The Effect of Labour Unions on Workplace Fatalities." *Occupational and Environmental Medicine* 75(10):736–38.

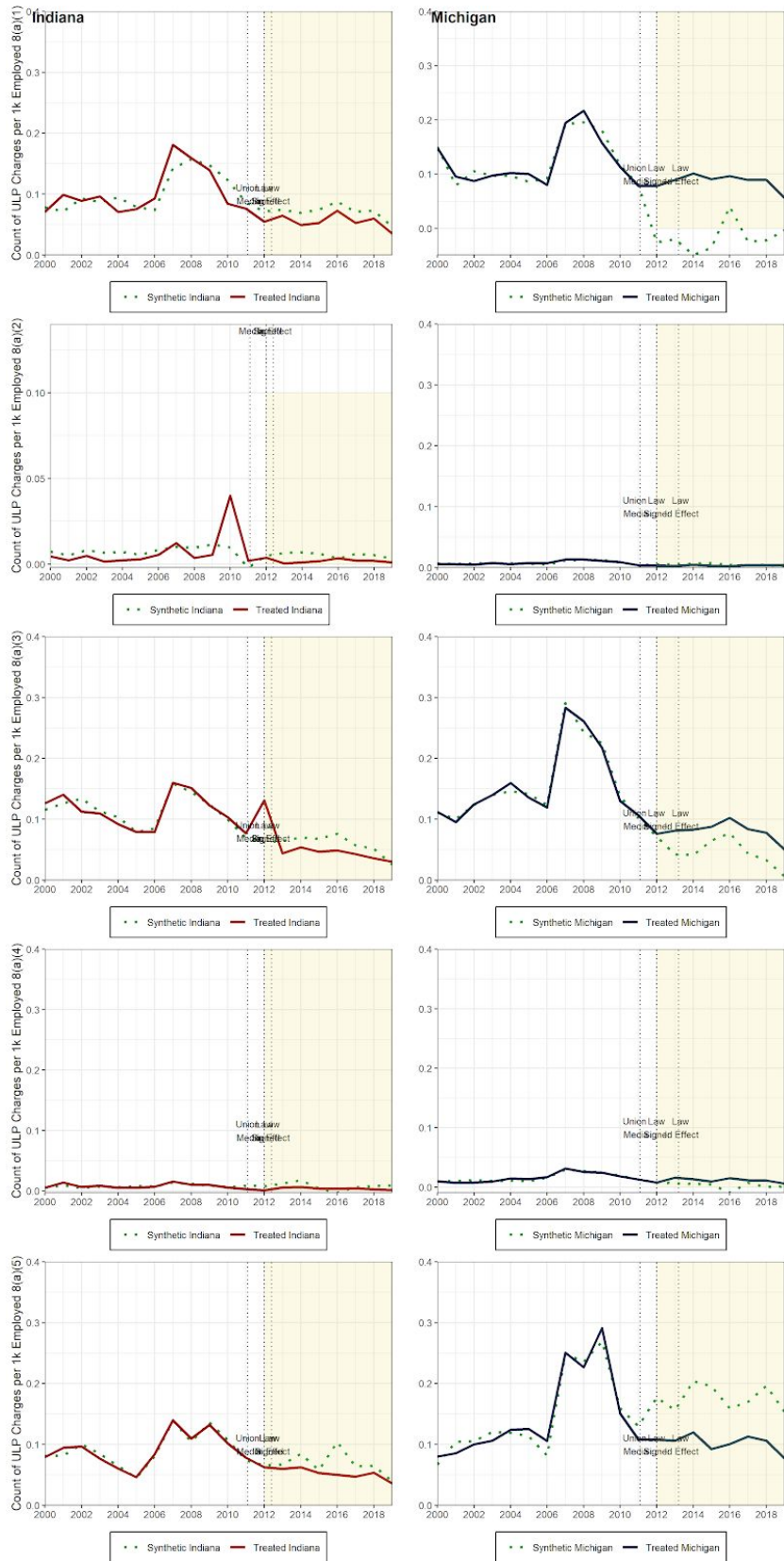
Appendix

Table 1. Covariate Data Sources

Covariate	Description	Source
% Unionization	The percentage of workers who are union members	Unionstats.com. 2020 by Barry T. Hirsch and David A. Macpherson.
% Unemployed	The number of unemployed workers divided by the population of workers in the state.	https://www.bls.gov/cps/cps_aa2002.htm
% Dem in State Legislature	The percentage of elected officials in either the house or senate of state legislatures who are Democrats. Nebraska is removed.	https://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx
GDP Per Capita	The level of Gross Domestic Product in 2019 dollars.	U.S. Bureau of Economic Analysis, "GDP per State," https://apps.bea.gov/itable/itable.cfm?ReqID=70&step=1#reqid=70&step=1&isuri=1 (accessed May, 2020).
Income Per Capita	The personal income per capita in 2019 dollars	U.S. Bureau of Economic Analysis, "Per Capita Income" https://apps.bea.gov/regional/downloadzip.cfm (accessed May, 2020)
Union Dues Collected	The total amount of union dues collected in each year in 2019 dollars	Data retrieved from OLMS annual disclosures. Dollars were converted to 2019 using https://www.bls.gov/data/inflation_calculator.htm
Union Assets	The total estimated dollar value of union assets in each year in 2019 dollars	Data retrieved from OLMS annual disclosures. Dollars were converted to 2019 using https://www.bls.gov/data/inflation_calculator.htm

Allegations Per Indiana and Michigan

Figure 16.



A Note on Data Collection

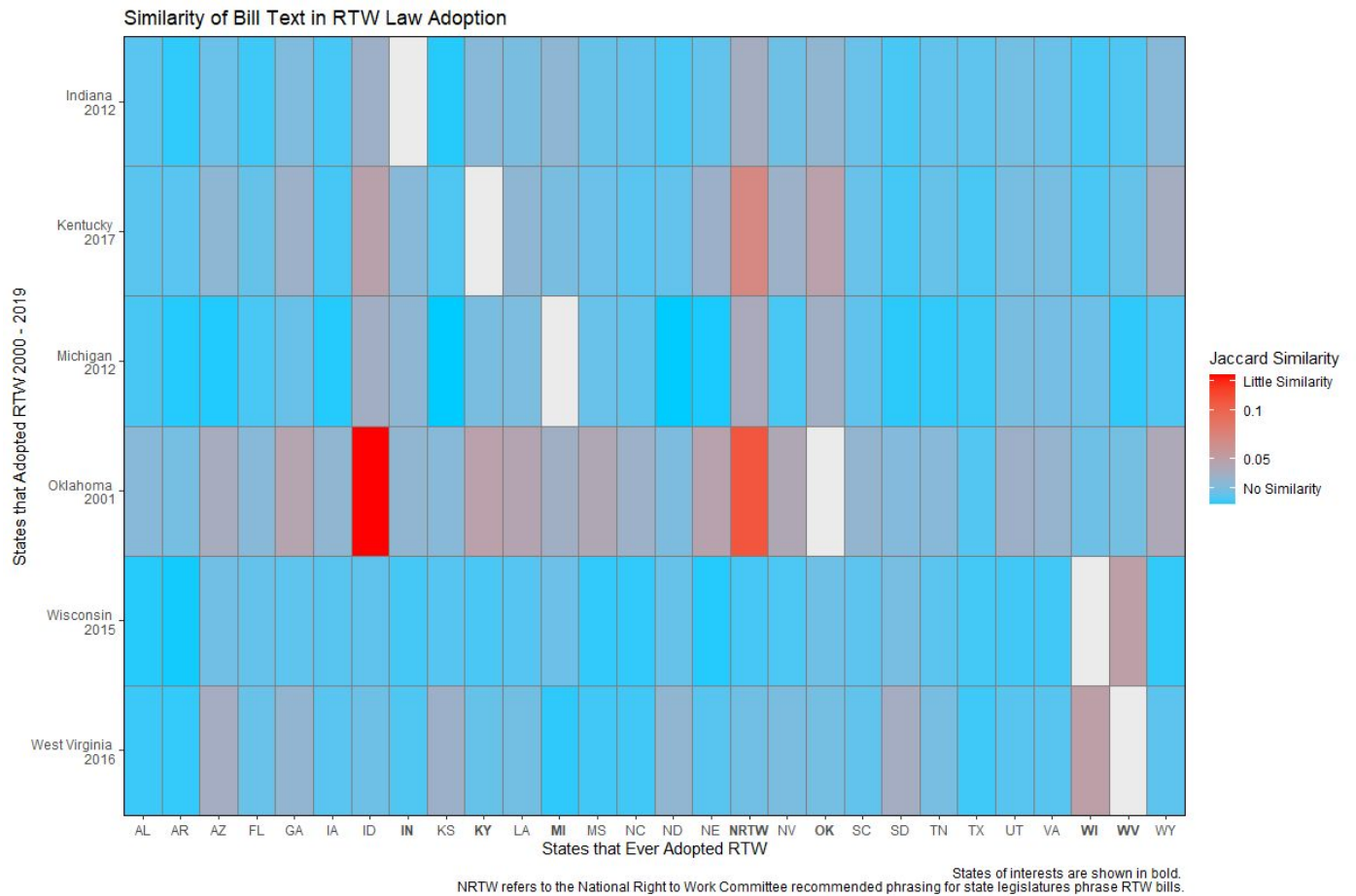
This analysis hinges on the census of unfair labor practice charges at the NLRB from 2000 to 2019. The NLRB website does not contain all of this information, therefore I had to implement significant scraping strategies in order to harmonize the data used. First, I scraped the NLRB.gov website's Recent Filings page for all closed cases. This procedure was done in two rounds. First, during the Summer of 2019, I collected each case individually by case number provided by the NLRB. I used the 'httr' package in R and downloaded each webpage for its relevant elements based on the case number rolls that were maintained on the NLRB website at the time of scraping. At the time, the NLRB allowed for any user to download a .csv with 5,000 cases with the following columns: date opened, date closed, name of the company, the plaintiff (either a union or a censored individual), and the number of employees involved in the case; I individually downloaded such a file about 500 times to get all the case numbers between 2008 and Summer 2019. I concatenated those files and used the column of case numbers to iterate over the column to download the relevant information stored on each case's individual webpage including information about union represented, legal teams, and outcomes of the cases. This procedure took about three months of constant scraping from a computer cluster housed on my campus at a speed that would not overrun the NLRB website (about 10 - 15 seconds per case). I revisited this procedure in the Spring of 2020 in order to complete the set of 2008 to the end of the year 2019. However, this analysis required more cases in order to make use of the synthetic control method and offer better identifiability of the relevant cases of Michigan and Indiana. Therefore I attempted to download the data.gov NLRB case management information from pre-2009. The link was broken and I had trouble contacting the correct IT person in charge of maintaining this dataset. Not to be deterred, I made a FOIA request (NLRB-2020-000024) to retrieve the so-called CATS data and have it restored to availability. I then harmonized this data, with the scraped post-2008 data to complete the set. While this data is incredibly granular in nature, in order to complete this analysis I aggregated the information to the state-year level to take advantage of time-varying variables collected yearly in a robust manner. Alternative to collecting this dataset at the state-year level may seem feasible, but I would caution against searching through NLRB activity reports to obtain this information. The activity reports were suddenly discontinued in 2010 in favor of a pie chart explanation of case success without granularity of the state level, much less the legal representation or outcomes per type of allegation.

Policy Diffusion

By 2020, 27 States in the U.S. have adopted right-to-work (RTW) laws that restrict the terms of private sector union security agreements. While the focus of this study has been on the consequences of adopting RTW on the usage of unfair labor practice filing at the NLRB, it is not immediately clear in the analysis that RTW is independently adopted by these states. In this memo I investigate the question of policy diffusion across common mechanisms (Shipan and Volden 2008). First, I examine the *imitation* mechanism wherein states simply copy other state's policy choices. I use natural language processing techniques to compare the similarity in content of the bills adopted by each of these six data period states to all 27 states who have ever adopted RTW. Second, I examine the influence of a *lobbying* mechanism by comparing bill texts to that of the National Right-to-Work Committee recommendation, which has remained largely unchanged and rigorously lobbied for since 1968. Lastly, I test for *learning* using a cox proportional hazard model to see how policy adoption by neighbor states change the survival of states on the hazard of adopting RTW.

I compare the bills that were adopted into law using Jaccard Similarity. The content of laws is a valuable outcome in the comparison of policy diffusion (see Taylor et al 2012). I compare the tokenized ngrams of the bills to compare the similarities in turns of phrase across the texts. In Figure 17, the tokenized ngrams comparison shows little similarity across the board. Jaccard Similarity is scaled 0 to 1 where "0" is no similarity and "1" is the same document. However, the most similar texts of these bills has a similarity of just 0.11. The jaccard similarity for all cases are low for virtually all comparisons of these bills suggesting little *imitation*.

Figure 17.



I fit a Cox Prop Hazard model to assess the likelihood of policy adoption net of early adoption by neighboring states, similarity of bill texts, and state-level characteristics relevant to RTW. The coefficients are presented in Table 1 with standard errors presented in parentheses. The time period assessed is starting from the adoption of Taft-Hartley (nationally justifying RTW laws throughout the U.S.) on June 23, 1947 until now. The survival time is measured in days. The hazard is adopting a private sector right-to-work law.

Table 2.

	Bivariate	Worker Conditions	Lobbying	DuBois Check	Election Promise	Full Model
Neighboring States	-0.416 *	-1.240 **	-1.289 **	-1.758 **	-1.390 **	-2.531 **
	(0.205)	(0.413)	(0.402)	(0.615)	(0.469)	(0.776)
In Per Capita Income		-7.994 ***	-8.924 ***	-7.346 ***	-9.486 ***	-12.492 ***
		(2.120)	(2.448)	(2.103)	(2.547)	(3.387)
ULP Charges Per 1k Employed		-40.433 **	-45.977 **	-45.775 **	-49.543 **	-80.578 ***
		(12.862)	(15.507)	(14.028)	(15.310)	(23.687)
Union Elections Per 1k Employed		10.321 *	12.159 *	13.003 **	11.940 **	21.655 **
		(4.291)	(4.863)	(4.929)	(4.610)	(6.762)
Similarity to RTWC Bill			-0.000			-0.000 *
			(0.000)			(0.000)
Southern State				1.536		2.500
				(1.175)		(1.300)
Election Year + 1					1.223	2.282 *
					(0.834)	(1.037)
In Population		-0.447	-0.639	-0.877	-0.768	-2.044 **
		(0.448)	(0.502)	(0.550)	(0.490)	(0.765)
AIC	126.579	65.108	64.452	65.317	64.705	59.900

*** p < 0.001; ** p < 0.01; * p < 0.05.

These models suggest that neighboring states adopting right to work is associated with an increase in time until adopting the law. This main finding of diffusion remains across all models fit. This finding is in contrast to what one would expect in a *learning* model of diffusion. Additionally, there seems to be no support for the *lobbying* mechanism of policy diffusion as both the temporality of NRTWC efforts and the content of their lobbying is not found in these models.

The enormous coefficients of the NLRB variables - ULP per 1k employed and Union Elections per 1k employed appear to be associated with separate notions of RTW's relationship with the usage of NLRB provisions. It could be the case that ULP Charges describe union activity, and states with highly active and efficacious unions are associated with higher survival. It could be the case that Elections at the NLRB describe a threat of a highly unionized labor force which anti-labor politicians would strive to prevent with RTW. I performed a check on the

adoption of RTW in Southern States specifically following the fraught relationship between White and Black labor in the adoption of RTW during the 1950s. This check is found in the model “DuBois Check” which offers little support for a separate grouping of southern states attaining RTW diffusion in a different way than their non-southern counterparts. I performed a check on the adoption of RTW as a function of Election Year promises following the example of Mooney (2001). There is no significant support for this mechanism in the “Election Promise” model. Mooney suggests that specific policy pushes could be used to inspire their base or thank their base.

The “Full Model” boasts quite large coefficients in the focal relationship of neighboring states, again offering little support for a *learning* model. *Lobbying*, however seems to get some statistical significance as other variables are added to the model. I would caution against any conclusions drawn from this variable as the magnitude of the coefficient is so small against other variables in the model. The traditional method of assessing diffusion by using event history analysis to examine how neighboring locales adopted policy influences policy adoption suggests that there is not policy diffusion of RTW net of content of bills, union activity, and state characteristics.