The "Sweetest Sounding" Words of Civil Rights: A Labor Origin Story of the "Right to Work"

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Abstract

This essay revisits the idea of "right to work" by offering historical context of Florida's passage of its 1944 right to work constitutional amendment. A brief overview of the history of the term right to work and its contested nature indicates how the phrase likely led to confusion especially in the arena of political economy. A close evaluation of the amendment and its incongruent nature reveals the intent of its proponents was to deceive voters with the "sweetest sounding" words of civil rights while weakening their ability to organize labor unions. The history of safeguarding the free market entailed disciplining the working class. In the context of the New Deal developing labor regime and hopeful signs of worker empowerment, advocates of "free enterprise" sought to tame democracy through its own governing mechanisms.

Keywords

Right to Work, "Right to Work" movement, labor history, labor unions, anti-unionism, union security, Florida, misinformation, disinformation

The historical record reveals how the idea of "right to work," at least in the United States, has been mired in an intellectual miasma that at best confuses most people and at worst angers others aware of its direct attack on working-class power. Take for instance Gilbert Gall's wonderful book *The Politics of Right to Work: The Labor Federations as Special Interests, 1943-1979* (1988), a dense study packed with impeccable qualitative and quantitative research of the labor union response to state level right to work campaigns and efforts to repeal section 14(b) of the 1947 Labor Management Relations Act (Taft Hartley Act). Section 14(b) of the Taft Hartley Act allowed states to pass "right to work" laws which translated to the disallowance of the union shop (sometimes derided by anti-unionists as the closed shop). The union shop meant all workers at a job site, once the majority of workers voted to join a union, either became union members or were required to pay dues from costs incurred from all the efforts included in contract negotiations and related union work related business. Modifications, reflecting efforts to work within the confines of a highly restrictive union security political atmosphere, have included efforts to isolate union job related fees from other union political activities into union agency fees.[1]

[1] Among many sources, Jane McAlevey, *A Collective Bargain* (2020) offers extensive discussion of the attacks on agency fees (sometimes called fair share fees) especially in public sector unions.

Gall's study begins with the early state efforts to upend the 1935 National Labor Relations Act (NLRA and also known as the Wagner Act after its chief proponent Senator Robert Wagner of New York) before the Taft-Hartley Act was passed in 1947; however, the vast majority of the book engaged the post 1947 period. As definitively demonstrated by scholar James A. Gross magisterial studies on the National Labor Relations Board, the resistance to unionism and union security existed within months of the passage of the 1933 National Industrial Recovery Act's and section 7(a) protection of workers' right to form their own unions. Employer resistance persisted through the entire period which culminated with the passage of the 1947 Taft-Hartley Act (Gross, 1974; 1981). As Gross notes, employers sought to take advantage of the break between craft and industrial unions in 1936, the internal conflicts within the National Labor Relations Board, and Franklin Roosevelt's wavering support of union security (Gross, 1981, p. 61-72, passim), especially in their efforts to emphasize worker choice whether to support a company union or other non-affiliated union (with either the AFL or CIO) or not choosing to be part of a union at all.[2] Many of the NLRA reforms in the Taft-Hartley Act had been proposed in 1940 by Representative Howard Smith after a highly political, propagandistic committee hearings in late 1939 through 1940. While his proposals did not pass, Gross argued that "the Smith Committee's investigation triggered drastic and long-lasting changes in American labor policy by the NLRB" (Gross, 1981, p. 221-225). Throughout the years after 1933 and increasingly after the passage of the 1935 Wagner Act, the discourse of the right to work emerged as an employer rhetorical strategy. Gross did not analyze the rhetoric of the right to work, while Gall focused mainly on the union institutional and political party efforts to support or resist union security measures.

Gall's study, nonetheless, was sprinkled with evidence of how confused voters tended to be about the idea of the "right to work" and thus generally represented an enormous challenge for labor union public educational efforts (Gall, 1988, p. 14-27, passim). To take just one example, Arkansas's AFL-CIO's 1971 efforts to repeal the state's 1944 right to work law (with Florida, the first of two states to pass such a law) ran up against a very confused electorate. Union analysts found that voters were "highly confused" with what the term "right to work" meant (Gall, 1988, p. 192-194). This is striking when one considers that the term had been around nearly three decades in its anti-union employer connotation. Such confusion suggested a civic knowledge gap so deep that years of education at the minimum would have been needed in order to have a fighting chance of repealing the Arkansas law. What that education project would entail was unclear, especially in the context of an educational system disinterested in teaching labor history. When combined with the particular dynamics of right to work campaigns, the uphill battle of securing pro-union, including union security, laws appear quite daunting. Gall notes, for instance, how in a 1958 Ohio right to work campaign, a researcher for a pro-union public relations firm commented that "the fact is proponents of the 'right to work' law can—by skillful selection of the right years and by ignoring pertinent factors—'prove' anything they wish" (Gall, 1988, 114-115).

The pertinent and undeniable facts Gall establishes included how Republicans and conservative Democrats (mostly from the South) voted consistently, at the federal and state level, against the union security issue of the union shop and other labor issues between 1943 and 1979. Understandably missing from his work was a more careful evaluation of what an education project

[2] The American Federation of Labor and Congress of Industrial Organizations merged in 1955. The CIO was founded in 1935 in a valiant effort to organize industrial workers who had too often been ignored or abandoned by the craft-oriented AFL.

about the nature of the right to work struggle would look like. The 1958 public relations analyst's insight about how anti-union advocates could "prove" anything implied how the issue of right to work could be distorted by omission and exaggeration, likely perpetuating disinformation, spreading misinformation about power and class relations, and generally contributing to the stifling of honest constructive discourse.[3] What education program could combat this? Analysis of one historical moment in the early 1940s—Florida's effort to undermine the NLRA—will help offer insight into the dynamics of civic consciousness relevant then and pertinent in the contemporary post-truth context. This is undoubtedly murky ground and the proposal here is not to offer a counterfactual history.

Rather this essay revisits a sort of origins story of the history of the right to work as a way to tackle how to educate individuals about its history and, thus, empower them in the clear class struggle that has been underway for quite some time. The discourse of the "golden era" of twentieth century capitalism (the lessening of inequality in the 1940s-1970s period) too often forgets the context of class struggle and worker and unionization precarity. Engaging "the right to work's" contested history will help document this story, one that challenges the neatness of the American Dream narrative of equal opportunity. Only a small segment of this long and deep history will be offered here; it's an elaborate story, one suitable for a larger book project on the subject. However, a close analysis of the origins of Florida's early 1940s right to work state constitutional amendment and the incongruent nature of its language, in the context of its contested history, reveals the intent of its proponents was to deceive voters with the sweet-sounding words of civil rights. Disempowering the working class represented the larger goal. The use of "rights" language and the flawed processes shaping the legislative and electoral components of governance enabled bad actors to undermine working class-power.

A Brief Historical Overview

Often forgotten is how the term "right to work" had its roots in a rich progressive and moral economic, social, and political tradition that contested the debilitating effects of capitalism. The details of this history are rich and elaborate, but a few brief points may offer a window into this story. The history of workers organizing since as early as the eighteenth century indicates consistent and concerted efforts to safeguard a living wage, shorter hours, just working conditions, and generally a moral economic outlook on how to order society.[4] In times of economic recession and depression, workers have expanded this perspective to include calls for the government to provide employment.[5] Soon social reformers, politicians, academics, and intellectuals in the late nineteenth and twentieth centuries joined these workers' calls by seeking to alleviate the worse aspects of a capitalist order. This centuries long struggle gained concrete traction in various labor

[3] The American Psychological Association makes a useful distinction between disinformation (false information deliberately intended to mislead) and misinformation (false and inaccurate information): "Misinformation and Disinformation," https://www.apa.org/topics/journalism-facts/misinformation-disinformation (last accessed March 11, 2025). The APA Council of Representatives agreed on a consensus statement. For that and other related material, see "Using psychology to understand and fight health misinformation," https://www.apa.org/pubs/reports/health-misinformation (last accessed March 11, 2025).

[4] The literature documenting this story is too vast to do it justice here. A good start is Murolo's *From the Folks Who Brought You the Weekend* (2018).

[5] Gutman (1965); Schwantes (1985). The idea of the right to work as a call for full employment was reviewed as early as 1952: Bachrach, (June 1952) "The Right to Work: The Emergence of the Idea in the United States."

laws and other gestures—from workmen's compensation, health and safety regulations, child labor laws, anti-convict labor laws, and several other work and labor union laws—culminating in the New Deal labor regime of the 1935 National Labor Relations Act and the 1938 Fair Labor Standards Act.

The phrase and idea of the right to work had long been used by workers and progressives. The labor economist John Commons used the term "right to work" in 1893 in his advocacy of having government serve as the employer of last resort; the American Federation of Labor President William Green also used it in a similar vein in 1931, as did Senator Robert Wagner and Maryland Representative David Lewis in 1932; and, later, Nels Anderson, prominent sociologist on unemployment and homelessness, wrote a book entitled *The Right to Work* (1938) about the public works projects of the Works Progress Administration.[6] Amid this progressive rendering of the term right to work was the Congress of Industrial Organizations drive beginning in December 1937 to assure employment for everyone.[7] Less than two years later, the Workers' Alliance of America, an unemployed workers organization, held a "Right-to-Work Congress" conference in the Labor Department (early June 1939) to tackle the problem of economic insecurity. It was a week-long conference that included various Congressional members participating in it, Eleanor Roosevelt giving a speech, and several demonstrations and targeted protests of Congress members.[8] No doubt, the CIO and the Workers Alliance sought to build on President Franklin Delano Roosvelt's New Deal, fiery rhetoric, and progressive vision. His 1936 Democratic Party renomination acceptance speech called out the "economic royalists," noted that "Necessitous men are not free men," and argued that the government needed to protect the "right to work and live." Roosevelt reconfirmed this expansive notion in his 1938 State of the Union speech asserting the right of the unemployed to "call upon government for aid" including providing "useful work" for "any needy American who can and is willing to work." Roosevelt's 1941 (Four Freedom's Speech) and 1944 State of the Union (Second Bill of Rights or Economic Bill of Rights) reiterated this hopeful message.[9]

Capitalists who argued for the right to work never did so in the spirit that each individual had a right to a job let alone one with a living wage and decent working conditions that prioritized health, safety, and reasonable work hours. Instead, their embrace of the idea of the right to work had its roots in their efforts to block unionization and protect the employers' right to employ who they pleased; so logically they argued for the free market and a laborer's right to choose not to join a union. Perhaps the most prominent group in the struggle against working class power and labor unions was the National Association of Manufacturers, one of several employer organizations that

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[6] Commons, (1893, pp. 80-81 & 107-111); Commons, (Feb 1899); William Green, *The Right to Work* (Washington D.C.: American Federation of Labor, 1931) which was an AFL pamphlet transcribing Green's speech given in the AFL convention held in Vancouver, Canada, October 1931; Wagner, (1932, pp. 185-193); *Legalizing Worker's Right to Work and to Share of Available Employment*, *Hearings Before the Committee on Ways and Means, House of Representatives, Seventy-Second Congress, First Session, June 9, 1932* (1932); Anderson, (1938).

[7] "C. I. O. Opens Drive for Right to Work," (1937, Dec 7).

[8] "Work Congress Opens," *Work* (bi-weekly newspaper of the Workers Alliance of America), June 3, 1939, 1 & "Work Congress Maps Recovery Drive," June 17, 1939 (thanks to Julie Day, Librarian at the Labor Department's Wirtz Library who kindly scanned for me copies from their wonderful collection); see the extensive coverage of the conference in the *Daily Worker* in early June 1939.

[9] "Text of Roosevelt Speech." (1936, June 28); Roosevelt (1938); Roosevelt (1941); Roosevelt (1944). Philip Murray, chairman of the Steelworkers Organizing Committee, quoted FDR's 1936 renomination speech during an intense labor organizing drive, "Labor Charges Intimidation," (1936, June 29).

took on this crusade.[10] The fight for the "open shop"—that workers in a job site could be union and non-union—began in the early twentieth century and appeared in the NAM's 1903 Declaration of Principles. It declared that "the doors of no industry be closed against American workmen because of their membership or non-membership in any labor organization." The following year, the NAM revised its Declaration of Principles, adding "its unalterable antagonism to the closed shop." NAM president George Pope in 1915 framed the point in a manner that would define the later connotation of the right to work when he declared "equal rights to all, and the right of every man to earn a living." The high-sounding rhetoric of inclusivity obscured the political project of disempowering the working class or rather forcing them to submit to the mandates of the market.[11] The right to work, though, did not mean an obligation to secure full employment.

Employers' arguments for the right to work emphasized the thuggish and illiberal dangers of an empowered labor union movement while boosting the familial, paternalistic characteristics of the workplace and employer. While legitimate concerns existed with union corruption, the records of such instances were rare and the historical context of its manifestations much more complicated than ever presented by anti-unionists.[12] The accusation of "labor bosses" usurping and concentrating power became increasingly more common in the 1930s and especially from the 1940s on in the context of the New Deal labor regime and totalitarianism on the world stage. Employers engaged in a seemly ceaseless public relations campaign that argued the worksite as a sort of family setting with the minimum expectation of unwavering worker loyalty. It was within this paternalistic context that employers argued for the workers' right to work free of any "outside" interference disruptive of the harmonious employer-employee relations cultivated in employee representation plans (also known as company unions).

Employers framed their concerns for the workers' well-being, especially their "right to work," as embedded in a noble act upholding law and order one meant to protect them from these "outside" unions. On June 29, 1936, the American Iron and Steel Institute announced it would resist any effort "to compel its employes to join a union or pay tribute for the right to work." This included protecting "its employes and their families from intimidation, coercion and violence" apparently from independent labor union efforts to organize workers. Several steel companies operated company unions, which according to the Institute, were freely selected through "elections… conducted by the employes themselves by secret ballot."[13] The Institute published this statement, according to a 1939 Senate hearing, in 382 newspapers in 34 states including the District of Columbia.[14] Shortly thereafter, the NAM published in their July *N.A.M. Labor Relations Bulletin*

[10] Two excellent studies of this anti-union movement are: Pearson's *Reform or Repression* (2016) and Hulden's *The Bosses' Union* (2023).
[11] *Proceedings of the Eighth Annual Convention of the National Association of Manufacturers*, New Orleans, LA, April 14-16, 1903 (New York: Secretary's Office, 1903), p. 165). The closed shop provision was added the following year: *Proceedings of the Ninth Annual Convention of the National Association of Manufacturers*, Pittsburg, PA., May 17-19, 1904 (New York: Secretary's Office, 1904), p. 173; *Proceedings of the Twentieth Annual Convention of the National Association of Manufacturers*, New York City, May 25-26, 1915 (New York: Secretary's Office, 1915), p. 269. T. A. Castillo, *Working in the Magic City*, p63-99.
[12] The literature is quite broad, but the work of Sidney Lens (1949), Andrew Cohen (2004), and David Witwer (2009) offer powerful correctives of simplistic binary narratives. A deep evaluation of the history of capitalism, including employer collusion in maintaining sweetheart contracts, is an important place to start.
[13] "Challenge Hurled to Lewis Group," *Pittsburgh Press*, June 29, 1936, 1.
[14] *National Labor Relations Act and Proposed Amendments, Hearings Before the Committee on Education and Labor, United States Senate, Seventy-Sixth Congress, First Session*, *Part 9, June 5-7, 1939* (1939), 1641.

a report on Remington Rand's May-June successful union squashing effort in upstate New York which introduced the innovative and notorious Mohawk Valley Formula. This anti-union counterinsurgency formula implemented a psyop-like public relations set of tactics, including astroturf politics, to undermine unionization drives. The *N.A.M. Labor Relations Bulletin* described the effort as one revealing a "community" organizing to protect "the right to work."[15] In that 1939 Senate hearing, Senators Elbert Thomas of Utah and Allen Ellender of Louisiana pressed Walter S. Tower, executive secretary of the Institute, for the clear propagandistic use of the term right to work as a vehicle to maintain open shop conditions. When mockingly challenged by Thomas if the Institute would embrace "the theory of Karl Marx, that every man has a right to work," Tower priggishly rejected it commenting, "I doubt if I would accept personally any theory of Karl Marx... none whatever."[16] Clearly, Tower sought to squash any suggestion of an expansive project about the meaning of the right to work, preferring to limit its scope as narrowly as possible thereby stripping it of its longer and deeper historical meaning.

By the eve of World War II, anti-union employers had identified a deceptive rhetorical tool that would obscure the dynamic of power and politics in the workplace. The realm of the market and the workplace, in their opinion, ought to be outside the sphere of politics. There was a striking parallel between the organized employers' anti-union arguments of the apolitical nature of the workplace and the emerging neoliberal arguments for having the state protect the market as a means to safeguard the liberty of the individual. This history cannot be unpacked here.[17] However, the brief outline offered above helps contextualize subsequent discussion of Florida's 1944 vote on a right to work amendment to its constitution.

A Right-to-Work Moment in Florida History

Florida's 1885 Constitution, a revision of the 1868 Reconstruction Constitution, mandated in Article XII (pertaining to education), Section 12 that "White and colored children shall not be taught in the same school," rectifying for racial purists one of the abominable wrongs of that dark period, though positively and patriotically remembered by some as the nation's Second Founding.[18] Adopted eleven years before the infamous Supreme Court case *Plessy v. Ferguson* (1896), which helped institute what amounted to an American apartheid for more than half a century, Florida proudly stood by its racist past in this segregationist turn. Interestingly, the state would again embrace the role of honoring repressive traditions and seek once more to lead the Union sixty years later. This time it would be accomplished deceptively and surreptitiously though, perhaps ironically, in a more performative way.

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[15] "N.A.M. Labor Relations Bulletin," No. 14, July 20, 1936, reproduced as Exhibit 3860 in the *Violations of Free Speech and Rights of Labor, Hearings Before a Subcommittee of the Committee on Education and Labor United States Senate*, *Seventy-Fifth Congress, Third Session*, Part 18, Employers Association and "Citizens Committees," National Association of Manufacturers, March 4, 7, & 8, 1938 (1938), 7924-7930. Exhibit 3861 (7947-8014) reproduced the National Labor Relations Board decision on the Remington Rand case (C-145). The nine-step Mohawk Valley Formula was neatly outlined on 7969-7970.

[16] *National Labor Relations Act and Proposed Amendments*, 1636-1648 (Marx quote on 1637).

[17] The literature is quite broad here. See Whyte, *The Morals of the Market* (2019) and Slobodian, *Globalists* (2018) for a thoughtful engagement relevant to my discussion here.

[18] For a copy of the 1885 Florida Constitution, see https://library.law.fsu.edu/Digital-Collections/CRC/CRC-1998/conhist/1885con.html. The literature on the Second Founding is vast but a good starting point is W.E.B. Dubois' *Black Reconstruction in America, 1860-1880* (1935; 1998) and Foner, *The Second Founding* (2019).

Amid a devasting world war with thousands of resident Floridians serving at home and overseas, Florida voters in 1944 faced a perplexing state Constitution referendum. Florida Attorney General Tom Watson and his legislative allies (especially State Representative Joe Jenkins of Alachua, Florida, a primarily agricultural area) succeeded in passing a "right to work" state constitution amendment in the 1943 legislative session after a failed though nearly successful attempt in May 1941 (Shott, 1956; Lowe, 1956). Before 1969, Florida's legislature met biannually. The 1885 Constitution mandated that once a state constitution amendment was passed by each house of the legislature by a 3/5th vote, the amendment had to "be submitted to the electors of the State, for approval or rejection … immediately preceding the next general election of Representatives." The amendment amended section 12 of the Constitution's Declaration of Rights which consisted of 24 total amendments or "sections."

Section 12 of the 1885 Declaration of Rights read as follows: "No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken without just compensation." Mirroring the Fifth Amendment of the U.S. Constitution, Section 12 outlined a clear framing of civil rights, that is, it protected the individual against potential abuses of state power by setting limits (double-jeopardy, self-incrimination, due process, just compensation for eminent domain) of how far a state could impose its power against an individual. The 1943 "right to work" advocates decided to add to this civil rights amendment a "right to work" provision which read as follows: "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

What a ballot actually looked like is unclear given no extant example exists in the State Archives of Florida holdings.[19] What we do know is that in addition to the various offices being voted for at the city, county, state, and federal levels, the ballot consisted of eight other amendments. The right to work amendment, also discussed as the "anti-closed shop" and less frequently as the "open shop" amendment, was listed as amendment 5 on the ballot. The ballot was nearly a yard long (33 inches), though it is unclear what font size and print type was mandated by the State ("Monroe Must Alter Ballots," 1944, Oct 19, 1944, p. 6-A). It is clear that voters' civic conscience, understanding, and focus were being challenged in very anxious times. This vote did occur amid World War II. Undoubtedly, the legalese would twist the sharpest legal minds, and the patience of anyone would be tested wading through a yard-long ballot of dense language and the many political offices up for election. Interestingly, voters were saved from an even longer ballot when the Florida Supreme Court in early October removed a tenth constitutional amendment from consideration, because it dealt with more than one subject. It happened to also be a very long amendment pertaining to local government divisions in two counties, and it consisted of nine

[19] I asked the very helpful Florida State Archives archivist, Dylan S. James, in a May 2024 visit to Tallahassee if the Archives held any sample ballots. He noted none were extant (confirmed in an email with author, 2/27/2025); the Archives do have sample ballots for elections in the post-1958 period. What did exist was the final tallies for the general election. See *General Election, Series S 1258, vol. 57* (1944), State Archives of Florida.

sections.[20] The Constitution (Article XVII, Section 1) mandated that legal notices of the constitutional amendments needed to be "published in one newspaper in each county where a newspaper is published."

The official announcement of the pending referendum that circulated months, weeks, and days ahead of the November 7, 1944 election did not publish the text of Section 12 of the Declaration of Rights section separately indicating simply and clearly that the "right to work" text was being added.[21] The announcement appeared in extra small print, much smaller than the text in the adjoining newspaper sections, and this "legal notice" included the other amendments under consideration. Voters were briefly informed in legalese that "A JOINT RESOLUTION Proposing an Amendment to Section 12 of the Declaration of Rights in the Constitution of the State of Florida, Relating to Double Jeopardy, Self-Incrimination, Due Process of Law, and the taking of Private Property with Just Compensation, *by Providing* the Right of Persons to Work Shall Not be Denied or Abridged on Account of Membership or Non-Membership in any Labor Union, or Labor Organization; and Providing that the Right of Employees to Collectively Bargain Shall be Preserved" (the italics and underlining the author's emphasis).

The text then noted, "BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF FLORIDA: That the following amendment to the Constitution of the State of Florida Section 12 of the Declaration of Rights of said Constitution, be and the same is hereby submitted to the qualified electors of the State of Florida for the ratification or rejection… that is to say, that Section 12 of the Declaration of Rights of the Constitution of Rights of the Constitution be amended so as to read…." The text of the entire amended Section 12 then appeared, that is, the 1885 text with the added right to work language. The words "*by Providing*," as explanatory language, was doing heavy analytical work creating the relationship between the existing Section 12 of the Declaration of Rights and the new right to work language, yet the nature of that relationship remained wholly mysterious.

Was the latter clause (the right to work phrasing) dependent on the first part (civil rights phrasing)? How did the former allow for the latter? What exactly, that is, did "*by Providing*" mean? The text of Section 12 that appeared divided the civil rights section with a definitive punctuation mark, a period, while its various clauses (due process, etc.) were separated by commas or semicolons. The right to work section was merely added on leaving the voter likely perplexed about the relationship between these two parts of Section 12. What exactly would they be voting to accept or reject? Who, in their right mind, would reject civil rights protections such as double jeopardy, self-incrimination, due process, and just compensation when the state executed its right to eminent domain? A civilian with no apparent dog in the fight could have easily misread the amendment and been torn on what to do. Rejecting the amendment, if not informed of the power struggle at stake, would seem like rejecting well-accepted civil rights.

The "right to work"—a vague phrase with contested connotations especially in the early 1940s—had never been a protected civil right. The principle of association was already protected in theory,

[20] "Hillsborough Amendment Stands," *Tampa Morning Tribune*, Oct 7, 1944, 4.
[21] Examples include: (all entitled "Legal Notice") *The Tampa Morning Tribune*, Sept 8, 1944, 11; *The Vero Beach Press-Journal*, Oct 13, 1944, 7A; *The Pensacola Journal*, Oct 26, 1944, 3; *The Clewiston News*, Nov 3, 1944, 3 (quotes taken from this source).

though not explicitly, by the first amendment in the U.S. Constitution and sections 5 (freedom of religion), 13 (freedom of speech), and 15 (freedom of assembly) in the Florida Constitution's Declaration of Rights. Such constitutional provisions were intended to limit the power of the government from preventing individuals from exercising the freedom of association as supported by such rights as speech, assembly, and religion. The novelty and confounding nature of the "right to work" language and this political maneuver of having voters decide on such a complex dynamic as labor relations was both profound and deceptive, perhaps more so than can superficially be discerned by the common eye. The intentional framing of it within the context of civil rights further obfuscated what right was given with the "right" to work.

The right to work provision essentially operated in a fantasy land. Section 12 of the Declaration of Rights protected the individual from state power. When had the state denied or abridged a person's ability to attain a job other than in a racist or sexist framework? This legislative action was a clear attack on federal sanctioning of labor union power as had been established by the 1935 National Labor Relations Act. Tom Watson and his legislative allies asserted state's rights in their effort to block federal labor law from impeding "free enterprise" within the boundaries of Florida.[22] The second clause of the "right to work" amending text alleging one's right to join a union and to collective bargaining rights served two purposes: (1) it was a convenient addition to help prevent it from being overridden by a potential federal supremacy ruling and (2) it sought to appease labor unionists by elevating unionization and collective bargaining to an apparent civil right—a right then compromised by the contingencies of the market and the appearance of choice.

In addition to mirroring wording from the 1903 NAM Declaration of Principles, this "right to work" language created a logical incongruency that is not self-evident on the surface. The "right to work" provision in Section 12 of the Declaration of Rights created an illogical construction: instead of limiting state power, the "right to work" expanded state power by inserting the state into labor market relations. The state was now to serve an apparent paternalist role for workers exercising its police power, protecting their "right" to not be part of a union, a clear counterreaction, perhaps even dismissive and contemptuous, of the New Deal's apparent empowerment of workers through labor union power. Tom Watson, Joe Jenkins, and their allies sought to put the state's finger on the scale by helping employers exploit the market and the general desperate reality of a worker's need to work in order to live and thereby encourage working-class division. The "right to work" provision did not protect the individual from the state; it protected the employer from an empowered working class. In attempting to create the legal apparatus to shield workers from the politics of the workplace—that is, the struggle over power in terms of wages, hours, benefits, and working conditions—the "right to work" offered an ostensible protection of worker "choice." It appeared neutral in that it seemed to empower choice in the marketplace of jobs as well as the freedom to potentially join or not join a variety of associations while mainly protecting the sanctity of the market. As the narrative went, labor union bosses (and the mob workers behind them) blocked economic opportunity while the employer, in the paternal role and protector of families, offered the American worker a chance to survive and advance economically.

Walter Tower of the American and Iron Steel Institute argued as much in his advocacy for the open shop in 1939 when he claimed non-union workers had the right to break strikes and then framed it

[22] See Glickman, *Free Enterprise* (2019) for an excellent history of the problematic term "free enterprise."

as a "right to work." In the end, Tower argued labor strikes prevented "the free flow of commerce" by interfering with "the right to work" (i.e., strikebreaking) and therefore functioned "as a direct obstruction" of commerce. Tower sought to turn the NLRA on its head by delegitimizing industrial democracy by both suggesting that company unions were legitimate institutions and explicitly and implicitly arguing that the AFL and CIO were generally ineffective entities or, worse, corrupting forces of workplace harmony. So, while the principle of voluntarism was a critical component of the liberal tradition that likely informed the framers of the Florida amendment, its explicit protection was an unprecedented state act, and in the context of "the right to work," intended to block unionization.

The market operated at its most optimal level (i.e., free flowing commerce) when workers were compliant or at least acquiescent, submitting to its expectations signaled by price (wages), duration (hours), and efficiency (pace). Or as Tower expressed it, the state ought to afford an "employee any protection against the interference with their right to work or not to work as they shall see fit." A labor strike, within this logic, equated to a mere choice between working or not working, a relational context devoid of politics. Tower argued that the NLRA "tended to increase industrial unrest and strife" and therefore should be reformed so "that nothing therein shall be construed as to interfere with or impede or diminish in any way the right to work." [23] The "right to work" represented a developing anti-union theory of how to undermine the growing worker solidarity. Nonetheless, it was not a civil right as indicated by the components in the original Section 12 of the Declaration of Rights; the reality that an individual's right was not being protected from an overreach of state power also highlighted this fact.

The logical incongruency in the amended version of Section 12 highlighted its innovative nature. It also suggested the framers' intentions: they had no concern about creating a new civil right or empowering workers. This effort represented a multitiered experiment in performative democracy and state intervention in disciplining the working class. Florida revised its Constitution in 1968 (June 24-July 3, 1968), updating it and correcting such incongruencies as the right to work amendment. The civil rights component in Section 12 of the 1885 Constitution became Section 9 (Article I) of the Declaration of Rights (due process, double jeopardy, and self-incrimination) and Article X, Section 6 (just compensation). The right to work became Section 6 of the Declaration of Rights with the added provision that "public employees shall not have the right to strike." This latter addition was itself a reaction to the growing national public workers' union movement as well as the teachers strikes occurring across the country in the 1960s and in Florida in the spring of 1968.[24] Conservatives embraced a long tradition of using the state to maintain law and order strictly defined and often applied in work and worker collective actions, especially in the public sector.[25]

While amendment 5 received the most votes of the eight other amendments on the ballot, the number who cast votes fell far below the overall number who voted in the presidential election. The total Florida vote for president was 482,803 while only 270,630 bothered to cast a vote for or

[23] *National Labor Relations Act and Proposed Amendments*, 1635-1636.
[24] For the 1968 constitution: https://library.law.fsu.edu/Digital-Collections/CRC/CRC-1998/conhist/1968con.html. Baxter, "We are Not Hired Help" (Winter 2017).
[25] Much of labor history literature documents this phenomenon. For public unions, a good start is Joseph Slater's *Public Worker* (2004) and McCartin's *Collision Course* (2011).

against the amendment 5 (56% of the total vote): 147,860 voted for it (30.6 of the total votes) while 122,770 voted against it (25.4%) (Scammon, 1965, p. 13; Gall, 1988, p. 234). Forty-four per cent ended up not voting at all. One post-election editorial commentary in the *Miami Daily News* made this telling insight: "the vote on the nine proposed constitutional amendments revealed the usual disinclination of many voters to interest themselves in the issues. The controversial labor amendment (No. 5) produced twice as many votes as any other amendment" ("Official Canvas," 1944, Nov 24, p. 14A). The comment the "usual disinclination of many voters to interest themselves in the issues" while pointing to a degree of condescension and ruthless accuracy, also sidestepped a glaring problem by blaming the apparent apathy. The straight ticket "party lever" voting option likely encouraged such apathy in helping voters skip voting for the amendments; the option's attractiveness was possibly increased given voters chose electors for the electoral college by party affiliation and did not vote directly for president.[26]

While I have yet to find any primary sources that would offer insight into the large voting gap, my discussion above points to how the amendment's confusing nature had an effect. The unwillingness of voters to cast a vote on the amendments (including no. 5) suggested that voters may have been uncomfortable in deciding so many matters. The overloading of the ballot with complex issues was an example of poor governance—whether by design or not—not a failure of the democratic process. The common sense of the "usual disinclination" insight points to an underlying strategy used by the legislator sponsors of the amendment. The "right to work" project, guided by anti-union motivated politicians, sought to take advantage of this "usual disinclination." Gilbert Gall noted that the state's AFL federation's plea for help in an education campaign fell on deaf ears from the national AFL (Gall, 1988, p. 22-25). However, the anti-leftism, the war context, the ambiguous meaning of the "right to work," the innovative nature of the democratic approach to undermine worker collective power, and the civil liberties framing which was so easily claimed in the "right" to work, represented steep challenges to overcome.

The performance of democratic process (holding an amendment referendum) forced the financially strapped national, international, and state organizations to correct systemic problems apparently endemic to democracies. It remains unclear how the state labor federation, national, and international organizations would have been able to correct the situation. Setting aside the education offered by the schooling system and its effectiveness or even the quantity or quality of news coverage over amendment 5, all challenging if not impossible topics to study, Florida continued to be a growing and changing state. Florida experienced continued growth throughout the early twentieth century, but the state saw a large uptick in population between 1935 and 1945. After experiencing a slower rate of growth between 1930 and 1935, Florida's population jumped from 1,606,842 in 1935 to 1,897,414 in 1940 (an increase of 290,572, 18.1%) to 2,250,061 in 1945 (352,647 increase, 18.6%), the largest since the ballyhoo days of the roaring land grab twenties (Bureau of the Census, 1942, p. 213; Mayo, 1936, p. 9; Mayo, 1946, p. 9). Political scientist V. O. Key Jr. in his classic 1949 book, *Southern Politics in State and Nation*, noted the "flux, fluidity, uncertainty" that characterized the state's growing population. He wrote "almost half the Florida's people were born in other states; half the people have no roots in the state… the consequence [likely has led to] a relatively uncrystallized social structure" (V. O. Key, 1984, p. 86). Indeed, he entitled his chapter on Florida "Every Man for Himself."

[26] While an official ballot is unavailable, a partial one appeared in the *Tampa Morning Tribune*: "Sample Ballot" (1944, Oct 24, p. 6) which showed the "straight ticket" party lever.

Conclusion

Economist John Shott, in his excellent short 1956 history of Florida's right to work effort, quoted the *Florida Advocate* (Feb 11, 1944), a Tampa labor paper, as critiquing the sponsors of the amendment for "shrewdly" selecting "one of the sweetest sounding sections of the State Constitution [which] many voters will not realize [was] already in the State constitution and has been for years" (Shott, 1956, p. 25). He suggested there was validity to their insight. The analysis I have presented here helps explain why the words had a sweet sound: its framers sought to confuse voters by linking the positive connotation of well-accepted civil rights to a newly constructed and narrowly conceived framing of the right to work. Indeed, Tom Watson and Joe Jenkins carried out the larger anti-union project stirring in the country. Instituting a limited conception of the right to work into Florida's state Constitution represented a deep hope to solve the labor problem, as Joe Jenkins highlighted, "now and for posterity" (Barker, 1943, p. 1).

This essay has purposely sidestepped various strands of the history of the "right to work" to focus on one critical larger point of logical inconsistency and intentional effort to misinform and confuse the electorate. It represents a critical origin point of the modern neoliberal attack on the legitimacy of unionization. A month after the 1944 election, a fascinating article argued that labor history ought to be taught in Florida schools. Henning Heldt, the *Miami Herald* political writer, noted how voters likely had a bad opinion of unions given that their knowledge of this dynamic institution would have been limited to "newspaper stories of strikes and the latest escapade of some labor racketeer." Hence, in Heldt's opinion, those who voted were likely "governed by emotions rather than reason" in the past election (Heldt, 1944, p. 19).[27] I would add that the ambiguity of the term right to work—especially in the context of a contested history of the meaning of the term—combined with the discordance of pairing it with a concrete framing of the sweet sounding civil rights provisions of Section 12 of Florida's Declaration of Rights helped confuse uninformed voters who either voted against it or failed to cast a vote on it. A good serving of labor history may have had a positive effect on the citizenry and may very well have prevented the passage of the right to work amendment.

Extending Heldt's suggestion to the present, it would be a positive development to teach a robust amount of labor history in primary and secondary education. Though I was firmly rooted in the working class, I do not recall much labor history in my own Florida education experience at the middle school, high school, or college levels in the 1980s and 1990s; it wasn't until graduate school that I studied labor history but even then the history of the right to work was not widely engaged in the historiography (Castillo, 2022, vii-x). In a recent conversation with a long-time Miami-Dade social studies teacher regarding the history of Florida's right to work law revealed how he had not known any of it (no fault on his part given the scarcity of the literature on it) meaning that he had never taught such content in his classes, regardless if the subject was American History, Government, or Economics. In fact, it is unclear to what extent the history of the changes to Florida's constitution is incorporated into the educational system let alone the history of the right to work. A quick perusal of *Florida's State Academic Standards—Social Studies 2023* does not

[27] The literature on this persistent theme in U.S. history is vast and is engaged by most authors of labor union history.

highlight any lessons on labor unions nor the right to work.[28] A review of an economics textbook used in Miami-Dade County public schools revealed a wholly inadequate and sometimes inaccurate discussion of labor unions and the right to work (Clayton, 2024, p. 306-321).

These gaps line up with my own experience teaching American Government and Economics in Miami-Dade County in the late 1990s to night school students completing high school graduation requirements. There were no lessons or content in the textbooks that engaged either Florida's right to work constitutional history or labor union institutional dynamics nor its elaborate and complex history. Henning Heldt's 1944 recommendation was never heeded and perhaps for good reason given the still very political nature of union security. The omission or limited treatment of labor history has likely been the case in many if not most other states in the country. The complexities of the history of the right to work are magnified by the liberal power of its underlying idea of free will and choice, a dynamic particularly morally powerful in the context of the history of union exclusionary practices. Yet engaging this history, warts and all, will help focus the analytical lens on power and class struggle as well as represent a step toward enhancing general civic consciousness and community. U.S. democratic traditions are far from neat. Unfortunately, a part of this democratic tradition has been the darker layer of the history of distortion and misrepresentation, perhaps especially when it has pertained to class power.

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[28] https://www.fldoe.org/core/fileparse.php/20653/urlt/6-4.pdf

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