

# OPPORTUNITY Ohio

## Options for Enacting a Right-to-Work Law in Ohio

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With Governor John Kasich's time in office coming to close over the next eighteen months, it is as good as time as any to explore policy options on how a right-to-work law would be implemented in Ohio. This timing is especially important given the upcoming policy debate among the four center-right candidates for governor. One of those candidates will emerge next May and, given the non-presidential voter turnout, likely will be elected the next governor.

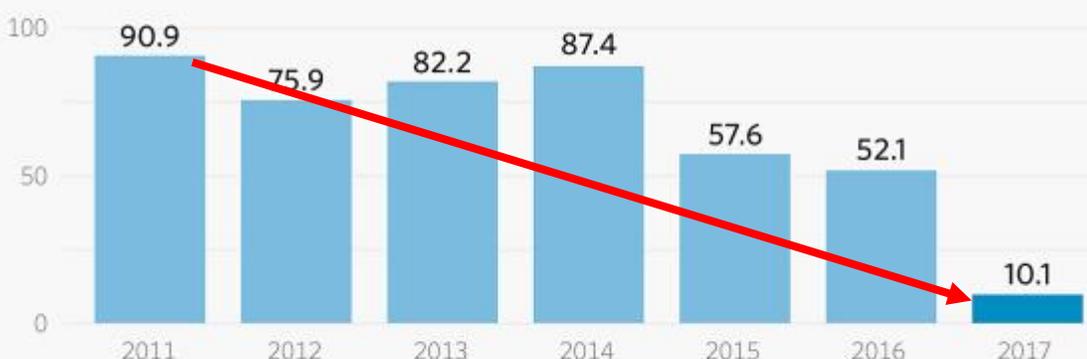
Each of these individuals will spend the next eleven months talking with voters about their policy plans, including their plans, if any, to enact a right-to-work law in Ohio. Right-to-work was an important policy for Ohio to adopt in 2010 when candidate Kasich challenged Governor Ted Strickland and candidate Kasich assured center-right voters that he would enact it in Ohio. Once elected, however, Governor Kasich quickly backtracked and decided it wasn't needed.

Six and a half years later, Ohio's private sector net percentage job growth under Governor Kasich is ranked a very mediocre 25<sup>th</sup> best in America...and [getting weaker the longer he is governor](#). Ohio went from 15<sup>th</sup> best in 2011 to the 38<sup>th</sup> best in 2016. If the pace from January to April continues, Ohio's private sector will net a mere 30,300 jobs in 2017.

### JOB GROWTH IN OHIO HAS STALLED UNDER KASICH

*Ohio saw modest job gains during the first four years of Gov. Kasich's administration, but since then the gains have declined each year. There has been a paltry gain of 10,100 jobs this year through April.*

YEAR-TO-YEAR CHANGE IN JOBS, IN THOUSANDS



NOTE: YEAR-TO-YEAR FIGURES ARE DECEMBER TO DECEMBER.  
SOURCE: U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

Even more problematic, over those years, six competitor states, including four of Ohio's five neighboring states, have enacted right-to-work laws. Specifically, Indiana, Kentucky, Michigan, Missouri, West Virginia, and Wisconsin passed laws to make right-to-work states the majority among the states. Ohio, along with New Hampshire, which at least passed a right-to-work law in one legislative chamber, is the only state entirely controlled by Republicans that is not a right-to-work state.



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Unlike those six states, Ohio has a unique constitutional provision that allows voters (**READ:** heavily financed special interest groups) to place a referendum on the ballot to veto legislation duly enacted by the Ohio General Assembly and signed by the governor. In [Article II, section 01c](#), citizens can veto legislation

by obtaining a majority of votes on a referendum challenging the proposed new law. Big Labor used the “veto referendum” in 2011 to veto Senate Bill 5, which reformed public sector collective bargaining in Ohio.

Because of the “veto referendum,” enacting any policy that impacts a major special interest group requires due diligence and strategic planning. There are three possible approaches to enacting a right-to-work policy in Ohio.

### ***Option 1: Sleight of Hand Approach Aimed at Securing Votes But Not Much Else***

This approach is a two-step process that isn't really an approach at all; rather, it is a sleight of hand intended to misled voters into thinking proponents of it will enact right-to-work. Specifically, this approach requires a first step that amends the Ohio Constitution to increase the “veto referendum” threshold from a majority of 50 percent plus one vote to a 60 percent “super” majority. The claim is that Big Labor would not be able to secure that high of a threshold thereby making it substantially harder for them to use the referendum to veto right-to-work legislation.<sup>1</sup> The second step is passing a right-to-work law and defending it at the heightened veto threshold.<sup>2</sup>

This approach is disingenuous because the odds of amending the Ohio Constitution to increase the threshold are very low. It first takes a supermajority of legislators in both houses to pass the constitutional amendment and a 50 percent plus one vote majority by voters to secure passage.

<sup>1</sup> Keep in mind, Senate Bill 5 fell to a “veto referendum” because Big Labor secured **more than** 60 percent of the vote. Thus, moving the threshold doesn't guarantee the defeat of a right-to-work referendum.

<sup>2</sup> The Ohio General Assembly could pass a right-to-work bill that either requires the governor's signature, which would then be subject to a “veto referendum” outlined in Option 2, or pass a bill submitted by petitioners aimed at going straight to the ballot as an initiative.

Given the anti-democratic nature of such a proposed amendment and the heightened interest by all special interest groups across the political spectrum to oppose such a change (versus just one group impacted by specific legislation like right-to-work), moving the “veto referendum” to 60 percent is highly unlikely.

Proponents of this avenue know this political reality. They use it to leave the impression that they will pass a right-to-work law knowing full well they will never get to step two.

### ***Option 2: Strategically Being Prepared for a “Veto Referendum”***

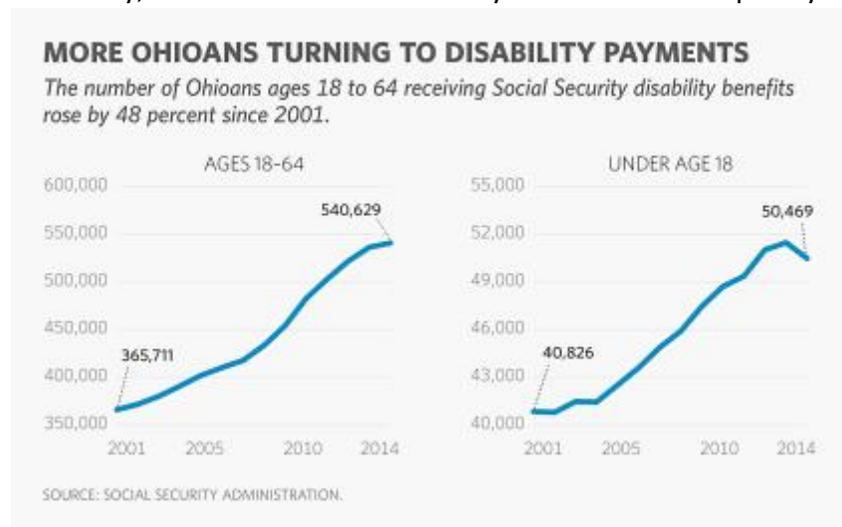
The second approach would be to pass a right-to-work law after preparing for a “veto referendum.” Specifically, this approach would require proponents to gain financial commitments from right-to-work supporters for a significant amount of funding to defend against a “veto referendum.” Given that Big Labor spent roughly \$42 million to veto Senate Bill 5 in 2011, commitments should total at least \$25 million before the right-to-work law is passed and another \$25 million after the right-to-work law is passed.

With such a large level of funding, it will be difficult for Big Labor to justify expending its finite resources on a “veto referendum.” If they opted to do so, right-to-work proponents would be fully prepared for the statewide policy debate over such a referendum.

### ***Option 3: Using the Emergency Laws Power of Supermajorities***

A final approach involves using the “Emergency Laws” provision in the Ohio Constitution to pass a right-to-work law. Under [Article II, section 01d](#), the Ohio General Assembly could pass a right-to-work law as an emergency measure “necessary for the immediate preservation of the public peace, health or safety.” Critically, emergency laws are not subject to a “veto referendum.” Such laws require a two-thirds (66.7%) majority of both houses. Because Republicans currently control sixty-six seats (66.7%) in the Ohio House and twenty-four seats (72.7%) in the Ohio Senate, they could pass such a law anytime in the next eighteen months.

Obviously, the Ohio General Assembly would need to explicitly state that the right-to-work law



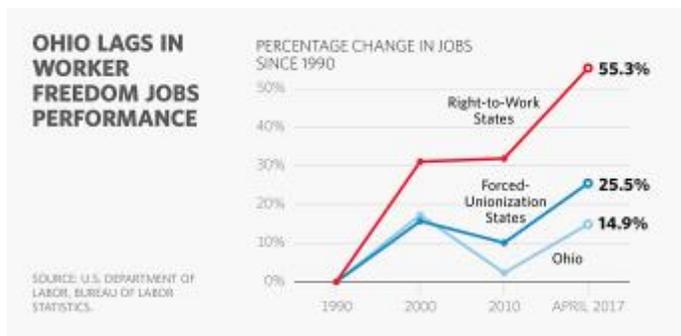
was being passed as an emergency measure for the immediate preservation of the public peace, health or safety put at risk due to:

- the [weak job growth in Ohio and the increased enrollment in disability programs](#) that drains resources from other health needs, with [Ohio’s rate outpacing the national average](#);

- the higher percentage of Ohioans dropping out of the workforce who are engaging in [black market labor activities that skirt state and federal health and safety laws and regulations](#); and
- the [mental and emotional health of unemployed workers](#) contributing to [Ohio's opioid crisis](#).

As Steven Steinglass and Gino Scarselli note on page 126 in their book, [The Ohio State Constitution: A Reference Guide](#), “The determination of whether a law is an emergency is **within the sole discretion of the legislature and is not subject to judicial review** (*State ex rel. Schorr v. Kennedy*, 1937)” (emphasis added). While opponents may disagree with the stated reasons for use of the emergency law, that determination rests with the Ohio General Assembly and cannot be reversed by the Ohio Supreme Court.

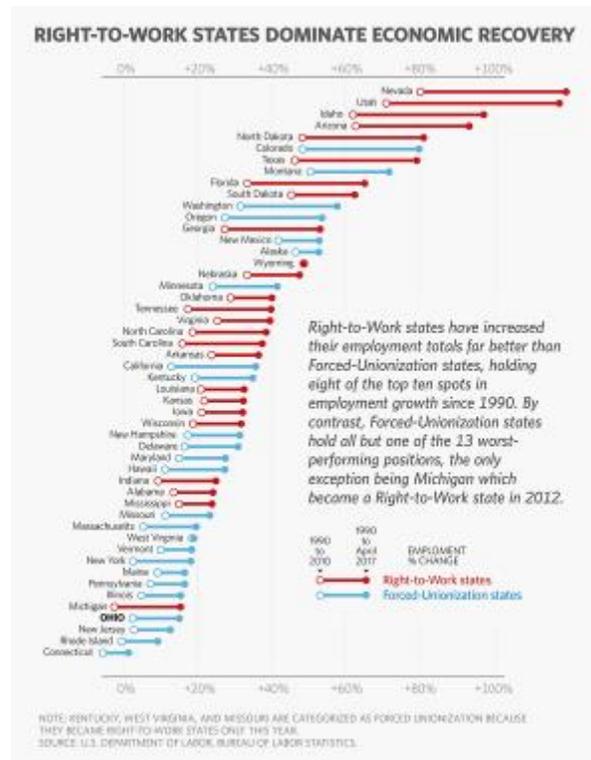
Big Labor could use the ordinary initiative process to change the law, but that process would be more difficult than passing a “veto referendum.”



From a policy perspective, the strongest approach to make Ohio a right-to-work state is the emergency law avenue. If that is defeated, then the strategic war chest approach is the soundest approach. As noted above, the two-step approach is little more than a classic

political two-step dance move allowing the proponent to feign support for right-to-work, but actually maintain the status-quo so as not to take on Big Labor.

The longitudinal data on job growth and right-to-work is unequivocal. [Right-to-work states dominated job growth](#) from 1990 to today. Of the twenty weakest states for private sector job growth, only Alabama and Mississippi are long-time right-to-work states. The other eighteen states are forced unionization states or only just recently passed laws to become right-to-work states (and, as the red lines for Indiana and Michigan show, are among the states with the strongest job growth since passing those laws). In stark contrast, of the top 25 states, seventeen are right-to-work states, including the northern “cold” states of Idaho, Nebraska, North Dakota, South Dakota, and Wyoming.



Contrary to the Big Labor claim that right-to-work laws are really right-to-work-for-less laws, as noted in our [Reimagine Ohio report](#) and shown below:

Personal income also increased at a faster pace in right-to-work states from 1970 through 2015 (latest data) according to the U.S. Bureau of Economic Analysis. The average per capita personal income net percentage change in right-to-work states was 1,157 percent compared to an average of 1,084 percent in forced unionization states.

If Ohio wants to have a robust, competitive economy where personal income growth exceeds the national average instead of lags it, it must adopt a right-to-work law. The policy debate over enacting a right-to-work law and the best policy option for doing that will be vigorous. Citizens should listen closely to which option noted above the various candidates endorse.

### PER-CAPITA PERSONAL INCOME, BY STATE

	1970	2015	% chg.		1970	2015	% chg.
● North Dakota	\$3,257	\$54,376	1570%	Rhode Island	4,098	50,080	1122%
● D.C.	4,970	71,496	1339%	Washington	4,189	51,146	1121%
● Wyoming	3,910	55,303	1314%	Pennsylvania	4,069	49,180	1109%
● New Hampshire	3,883	54,817	1312%	New Mexico	3,189	38,457	1106%
● Louisiana	3,089	43,252	1300%	● Georgia	3,379	40,551	1100%
● Arkansas	2,840	39,107	1277%	● Kansas	3,824	45,876	1100%
● Virginia	3,792	52,136	1275%	West Virginia	3,109	37,047	1092%
● South Dakota	3,286	45,002	1270%	New York	4,868	57,705	1085%
● Massachusetts	4,472	61,032	1265%	● Iowa	3,878	44,971	1060%
● Mississippi	2,628	35,444	1249%	● Utah	3,389	39,045	1052%
● Tennessee	3,176	42,069	1225%	Wisconsin	3,981	45,617	1046%
● Connecticut	5,071	66,972	1221%	Montana	3,624	41,280	1039%
● Vermont	3,625	47,864	1220%	Missouri	3,855	42,752	1009%
● Alabama	2,962	38,965	1215%	● Florida	3,998	44,101	1003%
● California	4,801	62,651	1205%	Oregon	3,927	42,974	994%
● Texas	3,628	46,745	1188%	Illinois	4,568	49,471	983%
● Oklahoma	3,475	44,272	1174%	Indiana	3,791	40,998	981%
● Nebraska	3,793	48,006	1166%	Alaska	5,248	55,940	966%
● Minnesota	4,050	50,541	1148%	<b>Ohio</b>	<b>4,088</b>	<b>43,478</b>	<b>964%</b>
● Colorado	4,040	50,410	1148%	● Idaho	3,539	37,509	960%
● South Carolina	3,055	38,041	1145%	Delaware	4,594	47,662	937%
● North Carolina	3,273	40,656	1142%	● Arizona	3,829	39,060	920%
● New Jersey	4,813	59,782	1142%	Michigan	4,198	42,427	911%
● Maine	3,413	42,077	1133%	Hawaii	5,077	47,753	841%
● Maryland	4,558	56,127	1131%	● Nevada	4,932	42,185	755%
● Kentucky	3,176	38,989	1128%				

NOTE: FIGURES ARE IN CHAINED 2005 DOLLARS.  
SOURCE: BUREAU OF ECONOMIC ANALYSIS.

● — RIGHT-TO-WORK STATE (HISTORICALLY)