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Appeals Court Upholds Local Right-to-Work Laws in Kentucky and Ohio

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(Dreamstime image: Phartisan)The Sixth Circuit Court of Appeals has upheld the right of local governments to enact local right-to-work laws in Kentucky.

The right-to-work movement won a major legal victory on Friday. The Sixth Circuit Court of Appeals upheld local right-to-work ordinances in Kentucky. The ruling opens the door for local governments to defend workers' freedom when their state legislatures will not.

The issue arises because union contracts often make union dues a condition of employment. If a worker doesn't pay dues, their employers are contractually obligated to fire them. Right-to-work laws stop this coercion. In right-to-work states, union contracts cannot force workers to pay dues. Currently, 26 states have right-to-work laws on the books.

Kentucky is not among these states. While the Bluegrass State's senate has repeatedly passed right-to-work laws, the (formerly) Democratic-controlled state House of Representatives has not. Kentucky unions, therefore, could still force unionized workers to pay dues.

Last year, several Kentucky counties decided to protect workers' freedom themselves. Kentucky, like many other states, gives localities "home rule" powers: Kentucky counties have broad powers to pass laws, so long as these local laws don't conflict with state law. Hardin County, along with eleven others, used their home-rule authority to pass local right-to-work laws. (These ordinances only apply to private-sector workers, not government employees.)

Right-to-work had an almost immediate economic impact in the counties. Within six months of Warren County (i.e., Bowling Green) passing local right-to-work, it received inquiries from 47 economic-development projects representing about 5,000 potential jobs.

Kentucky's union movement, however, still wants compulsory dues. The United Auto Workers and several other unions filed suit against Hardin County in federal court. They contended the National Labor Relations Act (NLRA) only allows states — and not localities — to pass right-to-work laws. In February, an Obama-appointed district-court judge agreed, and enjoined enforcement of the local ordinances.

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Last Friday, a panel of the Sixth Circuit overturned that decision and reinstated right-to-work. In *UAW v. Hardin County*, the Sixth Circuit applied Supreme Court precedents that hold the term "state" in federal law includes a state's political subdivisions, unless Congress expressly says otherwise. Nothing in the NLRA says that its references to "state" excludes localities. Hence, the appellate judges unanimously ruled, local governments can pass right-to-work laws if the state legislature has given them sufficient home-rule power.

In the short term, this ruling will have a limited impact; Kentucky will soon have right-to-work statewide. Kentuckians just elected a legislature with a pro–right-to-work majority. The only real question is when — not if — right-to-work will pass.

In the longer term, this decision matters a lot. The Sixth Circuit's jurisdiction includes Ohio, which also grants home-rule powers. Many Ohio cities can now pass local right-to-work without worrying courts will strike it down. The Ohio legislature has been in no rush to pass right-to-work; now Ohio cities can take matters into their own hands.

This ruling will also encourage localities outside the Sixth Circuit to pass local right-to-work. Many states such as Maine, Pennsylvania, Minnesota, and Colorado have state governments with divided partisan control. These states' governments are not hostile enough to right-to-work to ban it, nor supportive enough to pass it statewide. The Sixth Circuit's legal logic implies municipalities in such states can act on their own. Just as many liberal cities have passed local minimum-wage hikes, conservative cities can pass local right-to-work. This will let them protect freedom and attract jobs locally, even if their legislature won't act statewide.

Such local initiatives have already begun. Lincolnshire, Ill., passed a local right-to-work ordinance earlier this year (and unions are suing in federal court over it). Illinois falls under the Seventh Circuit Court of Appeals. If the Seventh Circuit comes to the same conclusion the Sixth Circuit did, then Illinois cities can pass right-to-work themselves. If the Seventh Circuit disagrees, the Supreme Court will need to resolve the disagreement. Assuming Justice Scalia gets replaced by an originalist, the prospects are high the Supreme Court will uphold local right-to-work nationwide.

When it comes to protecting workers' freedom, many Americans may soon be able to think globally but act locally.