

# Obama and Organized Labor: Legislative Limitations, Administrative Successes

December 1, 2010

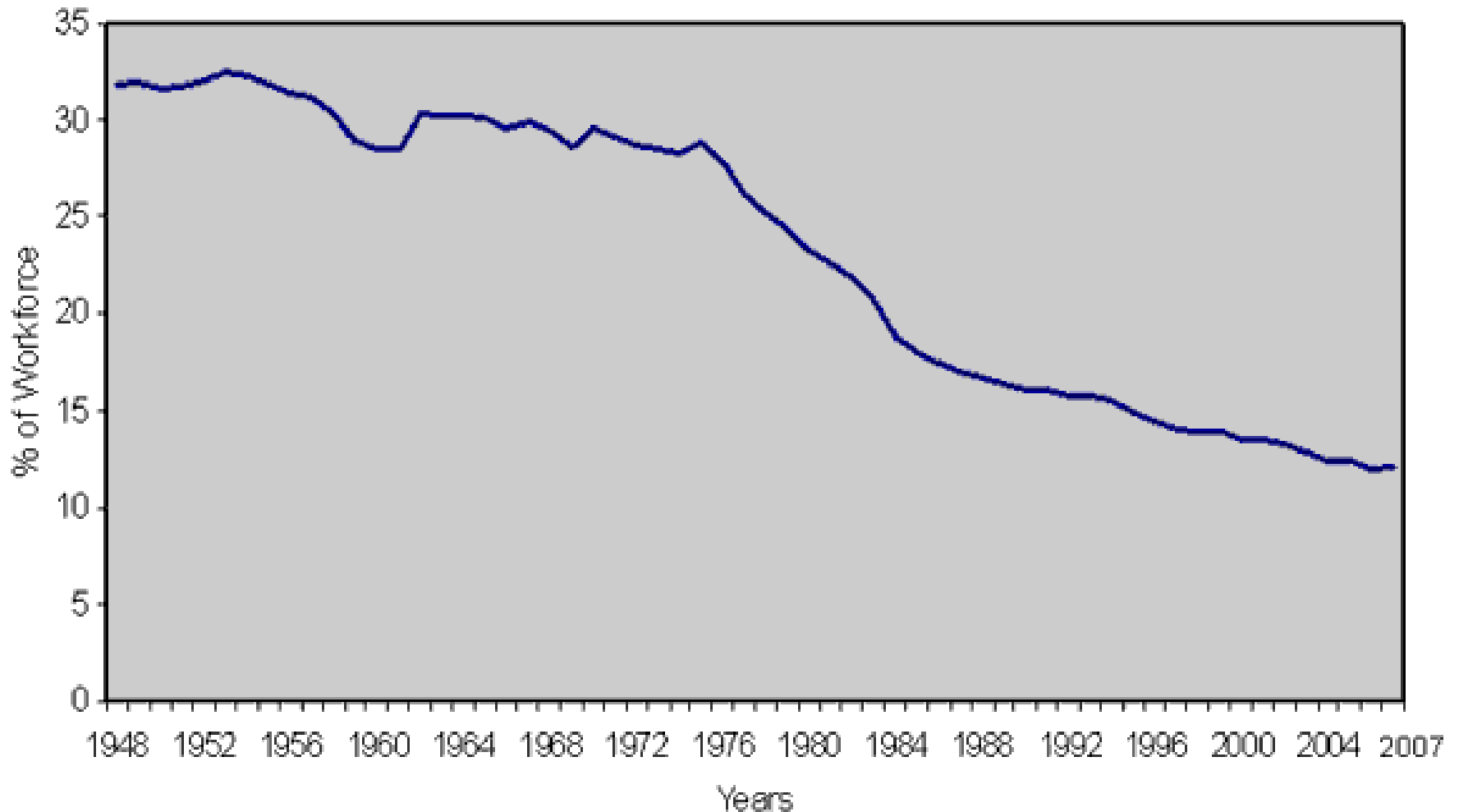
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# Argument

- President Obama and congressional Democrats were unable to deliver changes in labor law due to longstanding limitations: geographic concentration of unions + “conservative coalition” + anti-majoritarian features of US policymaking
- Obama did deliver significant benefits through use of an “administrative presidency” strategy
- Result was a largely **positive** relationship between Obama and labor, setting stage for close partnership in 2011 and 2012

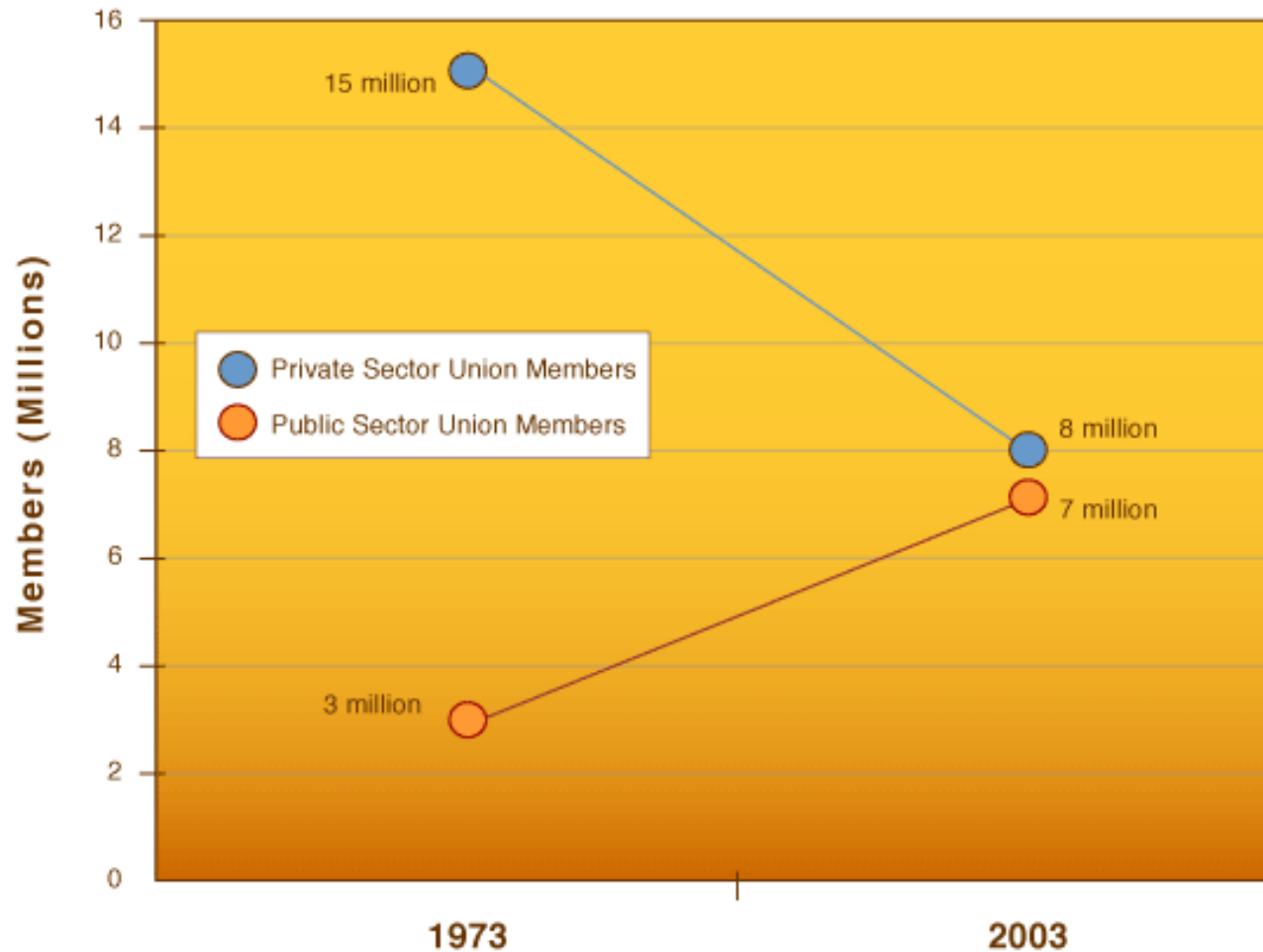
# The well-known problem, one both economic *and* political

**% of Workforce in Unions 1948-2007**



# Without the Public Sector, Union Density Would Be Even Worse

Source: U.S. Bureau of Labor Statistics

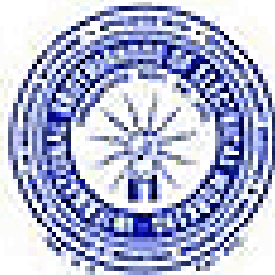


# Union Goal (and Obama's ): Reverse Decline Through Labor Law Reform

- Obama, Dec. 2008: “When it comes to unions, I have consistently said that I want to strengthen the union movement in this country and put an end to the kinds of barriers and roadblocks that are in the way of workers legitimately coming together in order to form a union and bargain collectively.”
- All Democratic presidents (and candidates) have said this.

# The Employee Free Choice Act

- Requires National Labor Relations Board to accept the “card-check” method to certify a collective bargaining representative in a workplace. Majority of employees must sign a card (see below) for certification (bypassing secret ballot system currently in place for most elections).
- Requires parties who cannot agree upon a first contract within 90 days to submit to supervised mediation by the Federal Mediation and Conciliation Service. After 120 days without a contract, the Federal Mediation and Conciliation Service will provide binding arbitration (valid for two years).
- Requires NLRB to seek a federal court injunction against an employer whenever there is reasonable cause to believe that employees have been discharged for union activity, or employers have interfered with employee rights during an organizing drive.
- Authorizes courts to grant temporary restraining orders or other appropriate injunctive relief.
- Increases fines on employers for illegal discharges of employees.
- Allows civil fines of up to \$20,000 per violation against employers violating employees’ rights during an organizing campaign.



## AUTHORIZATION FOR REPRESENTATION

I authorize a local union of the International Brotherhood of Electrical Workers, to represent me in collective bargaining with my employer.

Name .....  
(Please Print)

Address ..... Phone .....

City ..... State ..... Zip .....

S.S. # .....

Employer .....

Department ..... Shift: 1st  2nd  3rd

Job Classification .....

Date ..... Signature .....

# Why Some Were Hopeful:

## The partial fulfillment of labor's long-term political strategy

- (See handout)
- **Andrew Biemiller, AFL-CIO's Director of Legislation, 1965:**  
“The 1964 Civil Rights Act and 1965 Voting Rights bill will greatly increase the voting strength of Negroes in some of the previously uncontested, conservative districts in the South, bringing new forces into play in this long dormant area.” *“We would have no objection to seeing a strong Republican party appear in the South. It might turn Southern Democrats into a more liberal group.”*
- **Walter Reuther, United Auto Workers President, 1960:**  
“The American labor movement is essentially trying to work within the two-party structure, *but to bring about a basic realignment so that the two parties really stand for distinct points of view.*”



# EFCA Struggle

- Democrats got 60 votes (to overcome filibuster) starting in July 2009 (ending in Jan. 2010).
- Five-month window for EFCA spent mainly on health reform, banking and financial regulatory reform. John Sweeney and other labor leaders agreed to this sequence, but thought it would move faster and build momentum...
- Compromise offered in summer 2009: drop card check provision from the bill, replacing it with measures for quick or “snap” NLRB elections.
- Bill was essentially dead by Jan. 2010. *Never voted on by House or Senate.*

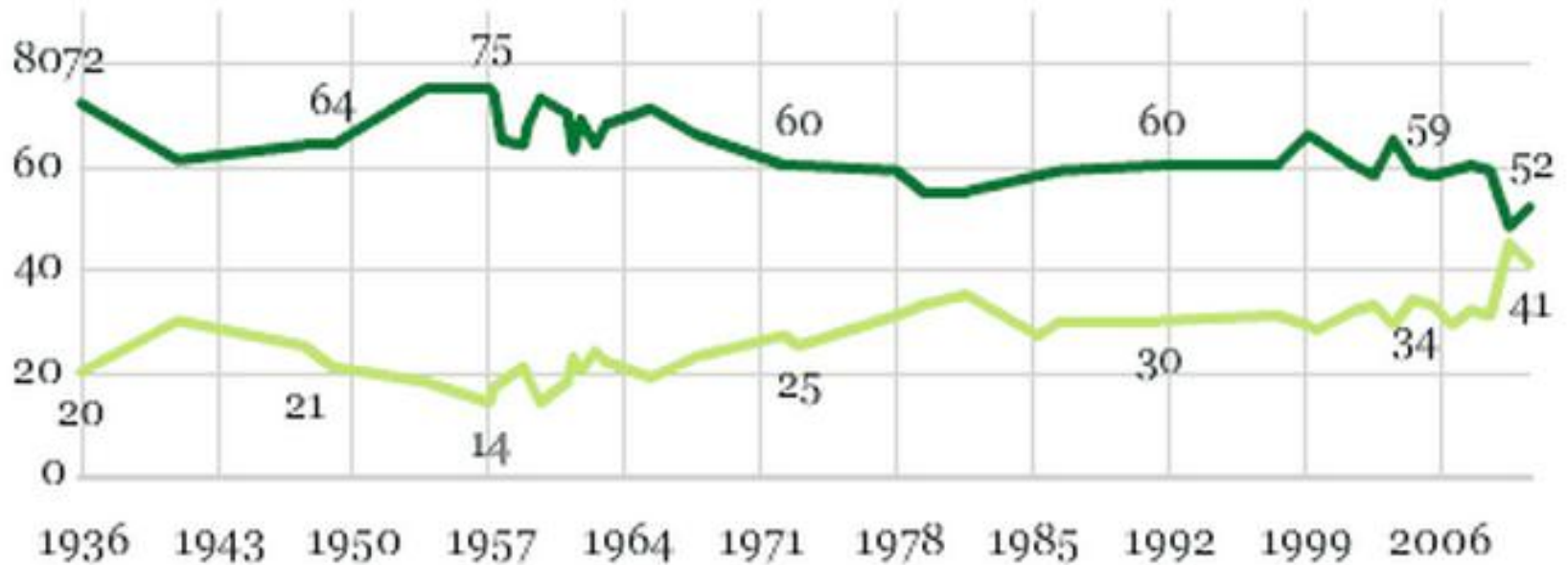
# How to Evaluate this Outcome?

- **Virtually an exact repeat of earlier patterns:** the political alignment of the conservative coalition (of Southern and moderate Democrats with a majority of Republicans) along with the super-majoritarian Senate has been the primarily stumbling block for labor
- **Sequencing:** Broader welfare state issues are usually put first by Democratic presidents; labor law reform comes later, with (mostly) lukewarm presidential support
- **Result:** Bill does not pass. Was there an alternative in this case? Probably not. Would have involved intense presidential support in the first months of his presidency, which was highly risky for Obama.
- And note **public opinion...**

# Recent Decline in Union Popularity

*Do you approve or disapprove of labor unions?*

■ % Approve    ■ % Disapprove



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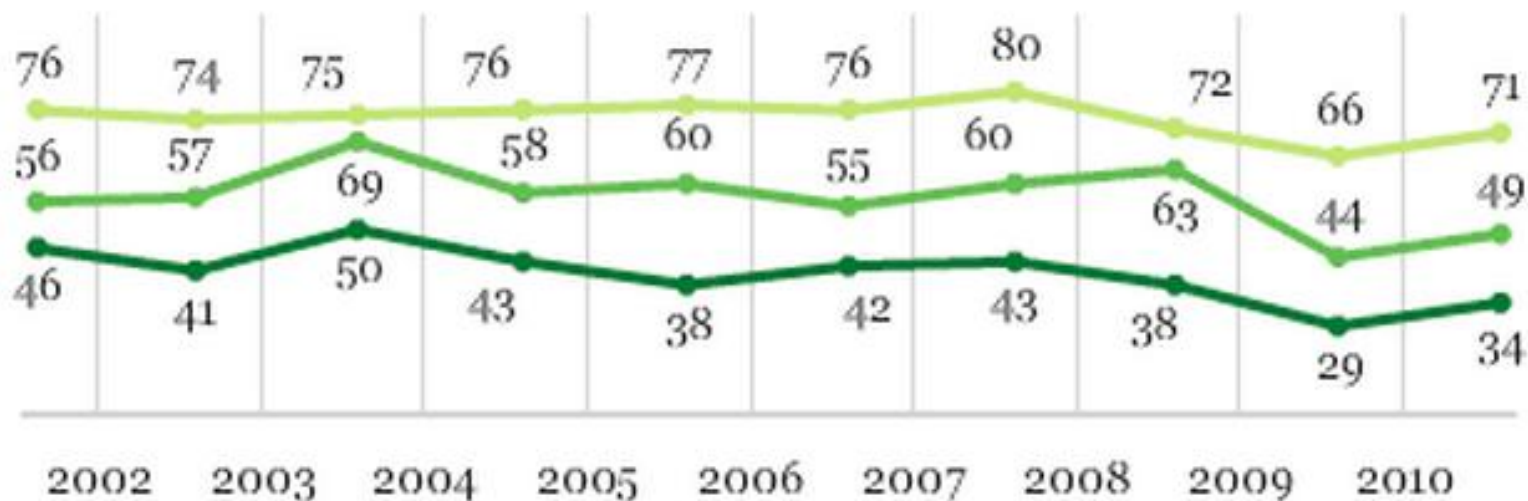
Results are based on telephone interviews conducted August 5-8, 2010 with a random sample of 1,013 adults, aged 18+, living in the continental U.S., selected using random-digit dial sampling. For results based on the total sample of national adults, one can say with 95% confidence that the margin of error is  $\pm 4$  percentage points.

# Swing voter disapproval of unions

*Approval of Labor Unions, by Political Party*

Recent Trend

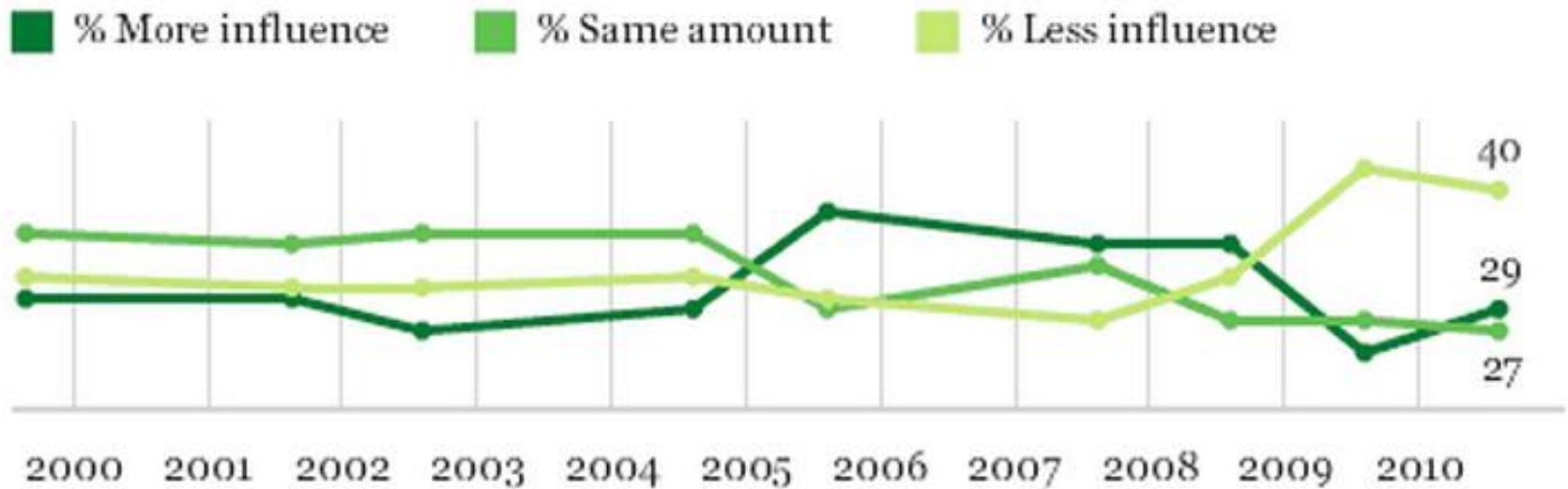
■ % Republican   ■ % Independent   ■ % Democrat



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# Public skeptical of union influence

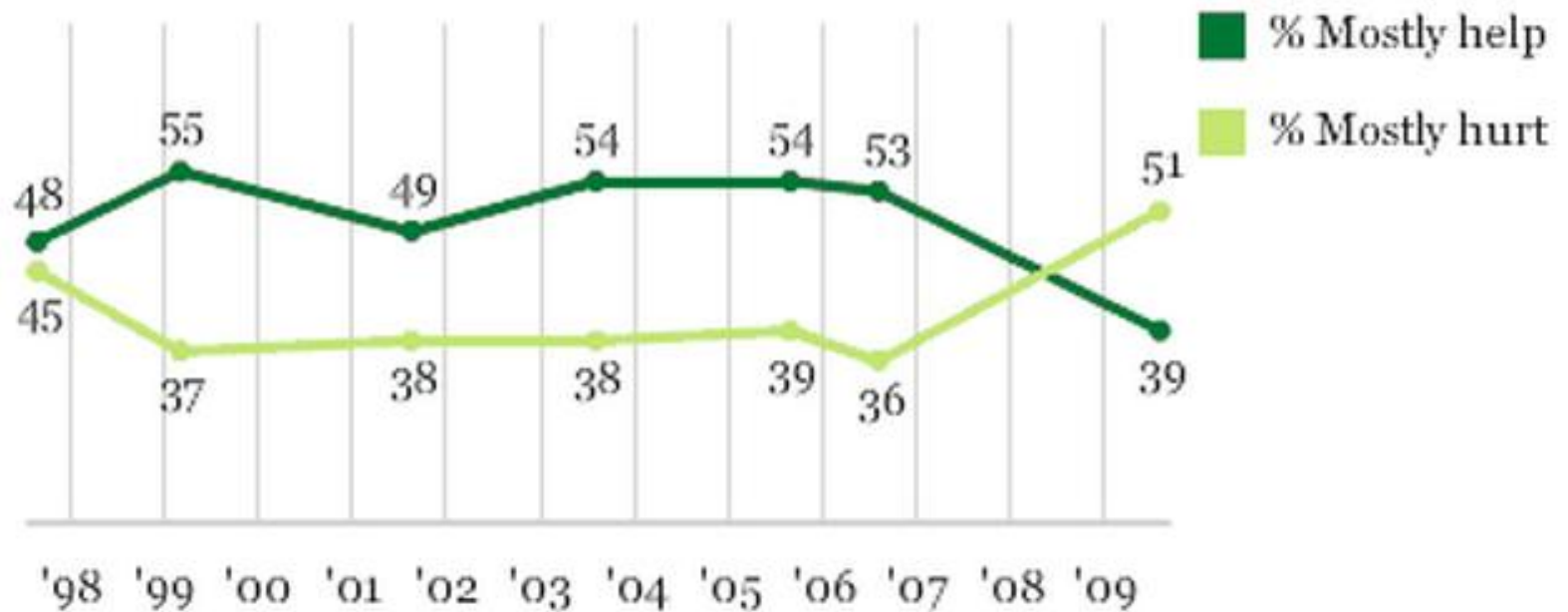
*Would you, personally, like to see labor unions in the United States have -- [ROTATED: more influence than they have today, the same amount as today, (or) less influence than they have today]?*



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# Public thinks unions *hurt* economy

*Overall, do you think labor unions mostly help or mostly hurt ... the U.S. economy in general?*



GALLUP POLL

# With numbers like these, what do you say to southern/rural Senate Democrats?

## Blanche Lincoln or Mark Pryor, AR

- State union density of 4.2 (!) percent



## Ben Nelson, NE

- State union density of 9.2 percent



# The Administrative Strategy

## Appointments: Hilda Solis



- Among most liberal/pro-union labor secretaries in US history
- From union family; ran for office with union support (especially liberal unions)
- No union opposition to her selection (in contrast to Ray Marshall and Robert Reich)



# Labor Department Policy Results

- Strengthened enforcement by Occupational Health and Safety Administration (OSHA), the Mine Safety and Health Administration (MSHA), the Office of Federal Contract Compliance Programs (OFCCP), the Wage and Hour Division
- 710 new “enforcement personnel” in the various worker-related agencies; increased funding
- Crack down on employers who incorrectly classify workers as independent contractors when they should be full-time employees.
- Sub-regulatory programs: “We Can Help” worker education; increased OSHA penalties

# Appointments: NLRB



- Two functions: (1) to determine, through secret-ballot elections, the free democratic choice by employees whether they wish to be represented by a union in dealing with their employers and if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions.
- Board now has four members: three Democrats and one Republican + one vacancy
- Craig Becker, SEIU lawyer (and former UCLA law prof) -- recess appointment in April 2010.
- Mark Gaston Pearce, union-side labor lawyer appointed by Obama; approved by Senate in April 2010
- Chair is Wilma Liebman, a remaining Clinton-appointee.
- **Result:** A liberal, pro-union Board. “E-card check?”

# National Mediation Board

- Similar to NLRB, but for airlines and railroads.
- Obama appointed Linda Puchala, former head of the Flight Attendants union, to the vacant seat on the three-member National Mediation Board (NMB) in March 2009.
- Board voted in May of 2010 to change a 75 year-old rule overseeing union recognition in the transportation industry. Instead of requiring a majority of all eligible voters in a bargaining unit to certify union representation, the new rule would make it easier for unions by requiring *a simple majority of all those voting*.
- **Result:** easier organizing.

# Obama Pro-Union Executive Orders

- An order prohibiting the use of government funds by federal contractors for anti-union expenditures (E.O. 13494 & 13517)
- An order requiring the non-displacement of qualified workers when federal contracts change service providers (E.O. 13495)
- An order requiring federal contractors to post notices in conspicuous places informing workers of their rights to organize and bargain collectively (E.O. 13496)
- An order encouraging federal contractors to use Project Labor Agreements for construction projects (E.O. 13502)
- An order re-establishing a labor-management Council within the federal government (E.O.13522)

# Trumka on Obama, March 2010

- “He really does get it,” said the A.F.L.-C.I.O.’s president, Richard L. Trumka. “He understands what working people are going through and he really does listen and **we really have a seat at the table.**”
- **“It’s totally unfair to say that the president hasn’t done this or done that,”** Mr. Trumka added. “He’s tried on the stimulus bill. He faces tremendous Republican opposition. On health care, I give him the highest marks for tenacity.”

# Why the “good” relationship?

- Unions don't blame Obama for problems in the Senate (see effort to remove Sen. Lincoln)
- Obama has come through on appointments to NLRB; Labor Dept.; etc.; and exec. orders
- Obama has protected union interests in the auto bailout, stimulus bill, and health care reform
- Obama has not pushed any major trade liberalization (unlike Clinton)
- Obama had handled the “politics of access” deftly (despite union schisms)

# Why persistence of union influence?

- Increased Democratic party homogeneity reduces internal party opposition (southern Dems out; union-tolerant/indifferent forces in)
- Growth in public employee unionism produces both increased ***need*** and ***capacity*** for political action. Card check failure less relevant to these unions; stimulus *very relevant*.
- Unions provide resources in terms of money, staff, volunteers that remain highly valuable in elections and the legislative process.

# Concluding thoughts...

- **Relative autonomy** of politics from simple numbers in society – unions retain influence despite low density
- **Institutions matter:** Design of US Constitution (bicameralism) and Senate rules affect outcomes
- **Geography matters:** Distinctive political/economic development of the South combined with anti-majoritarian institutional configuration has been crucially important.
- A lesson in **path dependency**
- **Questions:** Will labor law reform ever occur? What will happen when private sector density is down to 1 or 2 percent?