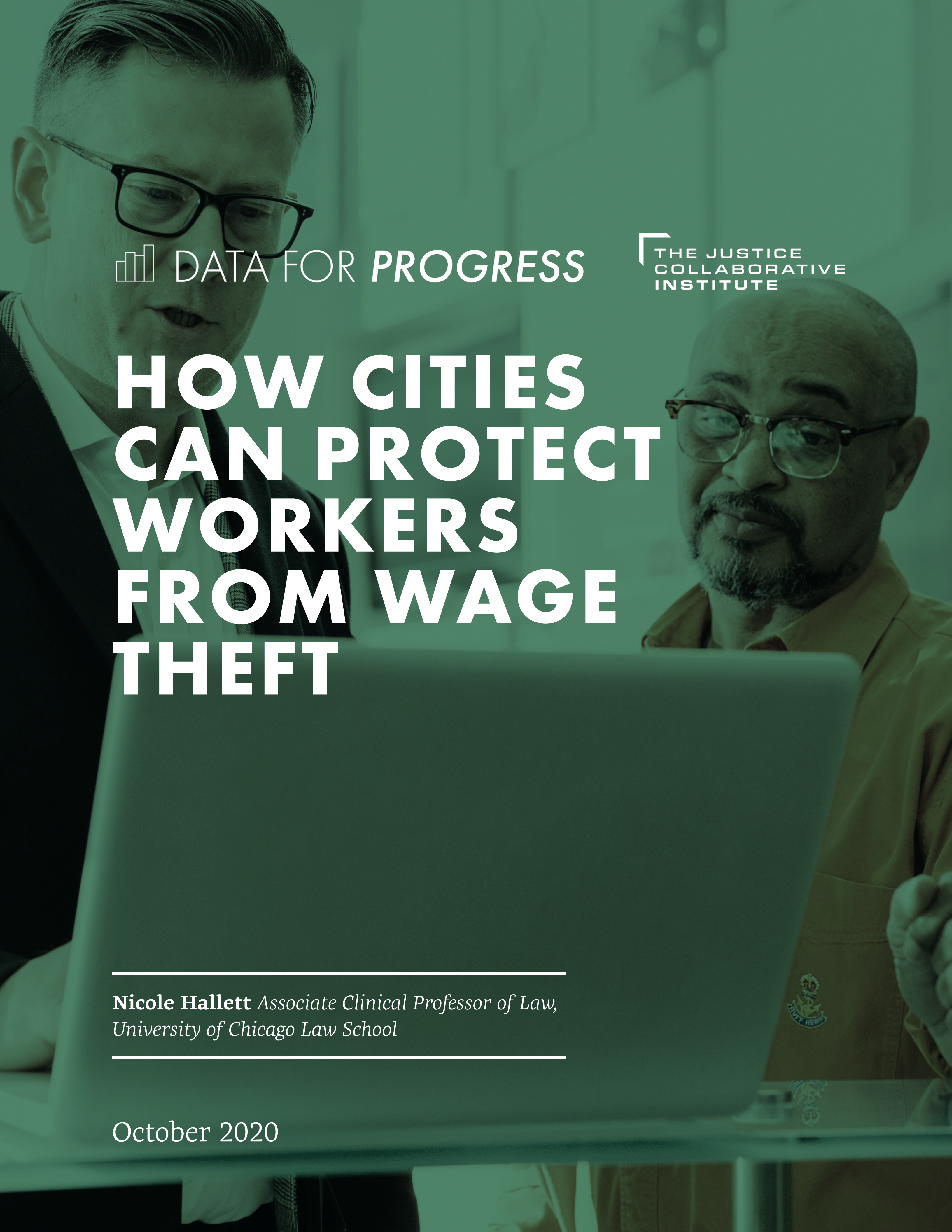

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HOW CITIES CAN PROTECT WORKERS FROM WAGE THEFT

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October 2020

INTRODUCTION

Each year, wage theft in the United States costs low-wage workers more than $50 billion. It's a staggering amount taken from people already struggling to make ends meet, and it's more than three times the amount that retailers lose annually to shoplifting. Yet, when it comes to enforcement, local governments and their police departments, spurred in some cases by sensationalist local media coverage or pushed by retailers themselves, have paid far more attention to shoplifters than to employers who write bad checks or otherwise fail to pay workers the money they're entitled to. Desperate people who steal get arrested and burdened with the life-long consequences of a criminal conviction, while employers who exploit labor to drive up profits face no accountability. That's been the norm.

But in some places, this is starting to change. Dozens of cities, including Chicago, Miami, and Washington, D.C., have recently enacted ordinances that expand local governments' authority to investigate wage theft and enforce violations. Columbus, Ohio, became the latest city to enact an anti-wage theft ordinance in September. Among other provisions, the law will create a new Wage Theft Prevention and Enforcement Commission to hear and investigate claims of wage theft, recommend sanctions for violations, and publish the names of businesses that steal from their workers.

Addressing wage theft is an essential part of providing economic security for working people, and if done correctly with robust enforcement, local wage theft ordinances can provide significant protections. These ordinances are also popular among voters. New polling from Data for Progress and The Justice Collaborative Institute shows overwhelming bipartisan support for local ordinances based on Columbus' model, with Republicans supporting many anti-wage measures at about the same rate as likely voters overall:

- **72% of likely voters, including 72% of Republicans,** support local governments creating Wage Theft Commissions to investigate and monitor employer compliance, hear complaints, recommend sanctions, and publicly report employers who engage in wage theft.
- **73% of likely voters, including 74% of Republicans,** support withholding city contracts and other financial incentives from employers who commit wage theft.
- **74% of likely voters, including 73% of Republicans,** support requiring employers that were found to have engaged in wage theft, whether through a civil court proceeding, arbitration finding, or otherwise, to report such findings to the city government.
- **75% of likely voters, including 74% of Republicans,** support requiring employers to maintain payroll records for inspection by the Wage Theft Enforcement Commission.
- **73% of likely voters, including 74% of Republicans,** support publicizing employers who were found to have engaged in wage theft.

WHAT IS WAGE THEFT?

Wage theft takes many forms, some of which are insidious and hard to detect.

One of these methods is the "misclassification" of workers as independent contractors, which allows businesses to avoid compliance with various workplace protections and affects millions of Americans each year. Employers may also pay less than the minimum wage or not pay an overtime premium for time worked beyond 40 hours a week. They may pay workers with checks that bounce or fail to pay them at all, claiming financial insolvency. They may require their employees to work "off-the-clock" or to pay recruiting fees, or they may illegally deduct wages from workers' paychecks for things such as work-related equipment or to cover a register that comes up short. Employers may steal their employees' tips, either by pocketing cash or by deducting a percentage from tips paid by credit card. Commonly, employers refuse to pay the final paycheck after a worker is fired or quits. Sometimes employers engage in several of these strategies to deny workers their lawfully earned wages.

All told, wage theft dwarfs all other kinds of theft. One study found that while approximately $340 million is stolen during the course of robberies in one year (including bank robberies, residential robberies, convenience store and gas station robberies, and street robberies), an estimated $50 billion is stolen from (mostly low-wage) workers, amounting to an average of 15% of total pay for workers in some cities. Given the impact of wage theft on low-wage workers, any progressive economic platform must include a plan for addressing wage theft, in addition to measures such as raising the minimum wage.

LACK OF ENFORCEMENT ENABLES EMPLOYERS

Worker advocates have a clear explanation why wage theft occurs: greed and unequal power between workers and employers. While both factors play a role, this explanation omits the fact that employers are rational actors—they will only commit wage theft when it pays to do so.

An employer's decision to commit wage theft often involves a cost-benefit analysis that takes into account the probability of detection, the expected penalties if detected, and the profit the employer expects to make by violating the law. Employers are less likely to comply with wage and hour laws when the penalties are too low or when it is easy to escape detection. As enforcement approaches zero, rates of wage theft skyrocket.

Most states and the federal government have wage and hour laws that require employers to pay workers a minimum wage and overtime and that regulate how workers must be paid. But enforcement of these laws is uneven, and few employers ever get caught committing wage theft, let alone pay the price for it. The U.S. Department of Labor does not have the resources to investigate all the complaints it receives, and states vary from having large administrative agencies tasked with enforcing wage and hour laws (e.g. New York, California) to states that do almost no enforcement (e.g. Alabama and Delaware).

Moreover, workers cannot enforce wage theft laws on their own. Workers may not know their rights and, even if they do, hold no legal power by themselves to force wage payments. In addition, most workers never file legal complaints, and vulnerable workers (such as immigrants, women, and nonwhite people) file them even more infrequently. Even workers who decide to make a legal complaint face severe obstacles. Filing a complaint in court is complicated, expensive, and requires a lawyer. As a result, most wage theft goes unpunished, and workers rarely get paid what they are owed.

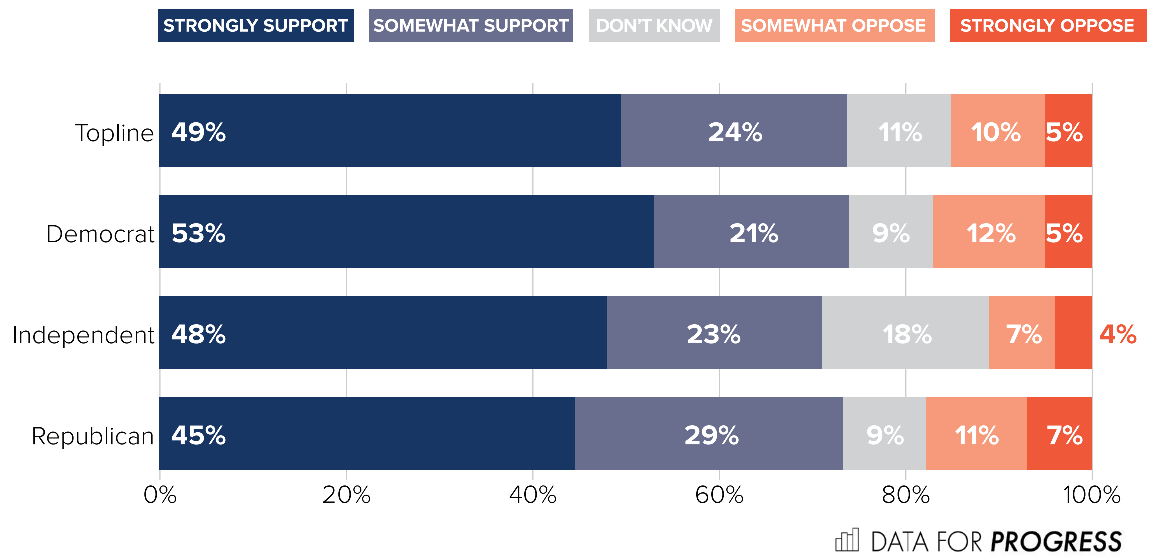
FILLING THE INVESTIGATION & ENFORCEMENT GAP

Many local jurisdictions have stepped in to fill this enforcement gap. Recent years have seen local wage theft ordinances pass in Chicago, Miami, Washington D.C., and dozens of other cities and counties. Though all of these ordinances purport to address the problem of wage theft, they vary widely in what they actually do and how effective they are in practice. Local wage theft ordinances generally fall into one of three categories:

1. Ordinances that regulate companies doing business with the city or county. For example, an ordinance may provide for the cancellation of city contracts if an employer is found to be misclassifying workers or otherwise committing wage theft. Houston and Chicago's wage theft ordinances fall into this category.
2. Ordinances that establish local administrative agencies tasked with enforcing state or federal wage and hour laws and with recovering stolen wages for workers. The Miami-Dade ordinance falls into this category, as do the ordinances in Seattle and Washington, D.C.
3. Ordinances that impose penalties, in addition to those already available under federal and state laws, on businesses who commit wage theft in the jurisdiction, such as financial penalties or permit/license revocation. Ordinances in El Paso and Cincinnati fall into this category.

Some local ordinances cover off more than one category. For instance, Columbus' new ordinance regulates both city contracts and allows for permit revocation when a violation occurs. It also establishes a commission that can recommend other penalties against employers, but cannot help workers recover wages directly. Columbus, like many other jurisdictions, is limited by state law in what it can do; in some states, including Ohio, a more aggressive anti-wage theft ordinance would be preempted by state law.

Do you support or oppose cities withholding city contracts and other financial incentives from employers who commit wage theft?



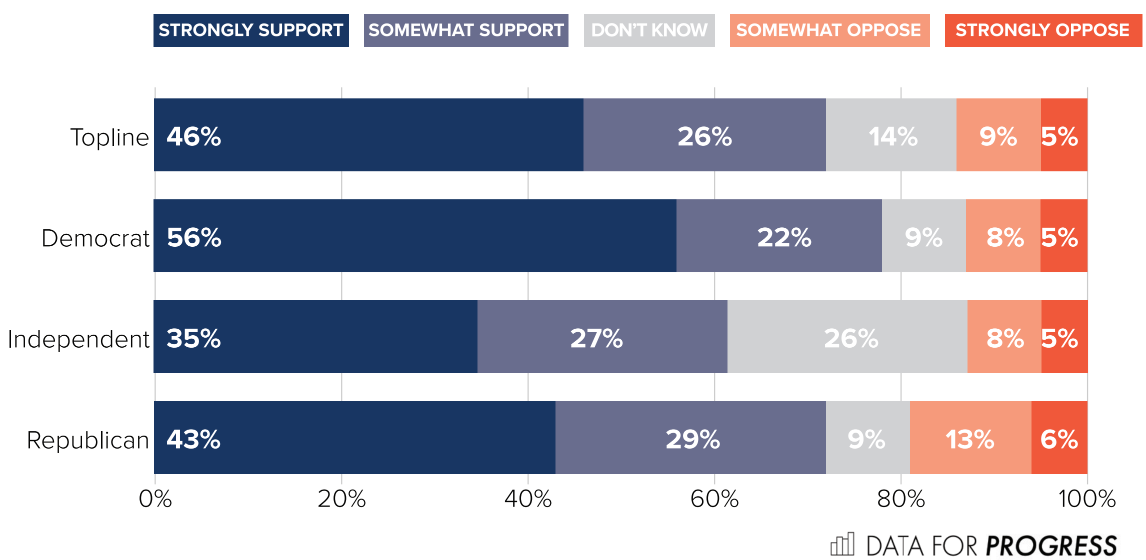
If we want to effectively address wage theft, increased or new penalties for employers must be paired with robust enforcement. Otherwise local ordinances are unlikely to make much difference in whether employers comply with the law. Thus an ordinance that provides for contract cancellation or permit revocation will only be effective if there is a mechanism for investigating wage theft and determining which employers have broken the law.

For example, Chicago's 2013 wage theft ordinance allowed the city to revoke or deny business licenses if the applicant admitted guilt or was found liable for wage violations in a judicial or administrative proceeding during the five years prior to the date of application. But few workers win judgments in wage theft cases, in part because of the obstacles to filing and pursuing a complaint, and also because workers who do pursue claims may settle out of court before judgment. Indeed, a review of the public record since 2013 shows little evidence that the ordinance has led to many license revocations—a predictable result.

Conversely, ordinances that provide for enforcement through wage repayment and financial penalties at the local level have a better chance at actually reducing wage theft. For example, Seattle's Wage Theft Prevention and Harmonization Ordinance of 2015 created a local Office of Labor Standards ("OLS") to enforce wage and hour laws and levied additional penalties on employers who violated the law. OLS has assessed over $9 million in fines and back wages in four years, almost all of which has gone into the pockets of workers. Moreover, a local ordinance that provides multiple ways to hold businesses accountable for wage theft is more likely to be successful at recovering lost wages for workers and deterring future wage theft by employers.

Looking at it through this lens, Columbus' ordinance has a good chance of succeeding. The ordinance sets up a Wage Theft Prevention and Enforcement Commission that can receive complaints, investigate violations, and impose penalties. The commission will have at least one full-time staff member—an important requirement that ensures it will have the minimum resources to actually enforce the ordinance. However, the ordinance does not allow the commission to recover wages for workers. Instead, it must refer workers to the U.S. Department of Labor or the Ohio Department of Commerce. In this way, the Columbus ordinance is stronger than some ordinances, but not as strong as those enacted in Seattle and Miami.

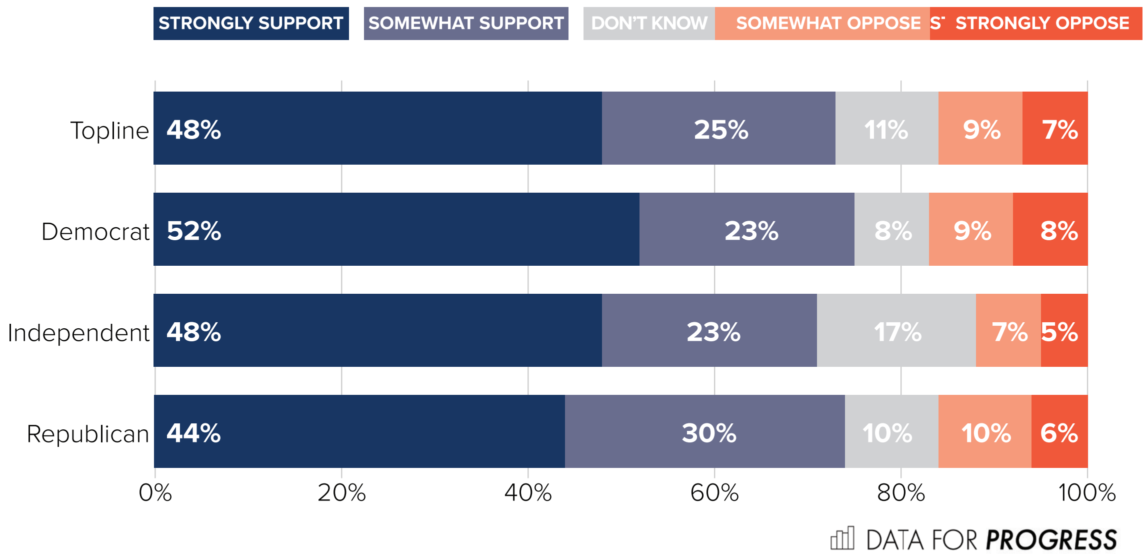
Do you support or oppose creating a Wage Theft Enforcement Commission that would investigate and monitor employer compliance with wage regulations, receive complaints about wage theft from the public, publicly report employers who engage in wage theft, recommend sanctions for wage theft, and provide public education about anti-wage theft regulations?



Even wage ordinances that do not have a robust enforcement mechanism, however, may be worth passing. First, they may set the groundwork for additional legislation in the future. For example, in 2018, Chicago created its own Office of Legal Standards after lawmakers concluded that the 2013 ordinance was not sufficient at addressing wage theft.

Second, even toothless ordinances may have some effect on social norms around wage theft that could prompt a change in employer behavior. Signalling that wage theft is immoral can change public opinion. An employer who breaks the law in a place with strong social norms against wage theft may suffer adverse economic consequences if consumers vote with their pocketbooks. Businesses wanting to avoid bad publicity may decide to follow the law even if they don't fear direct enforcement. Moreover, research has shown that people comply with laws not only because they fear getting caught but also because they have internalized the norm against breaking the law.

Do you support or oppose publicizing employers who were found to have engaged in wage theft?



CONCLUSION

Wage theft is a problem with immense consequences for low-wage workers and more attention must be paid to how to solve it. Local ordinances are an important piece of the puzzle and deserve support from worker advocates, at least until action becomes possible at the national level. However, not all local ordinances will be effective at combating wage theft. Legislators must pass anti-wage theft laws with meaningful enforcement mechanisms.

POLLING METHODOLOGY

From 9/18/2020 to 9/19/2020, Data for Progress conducted a survey of 1,104 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is +/- 2.9 percentage points.

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