


The Rail

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Exposing America's most powerful special interest: public-sector unions

By Matt Paprocki, President and CEO, Illinois Policy Institute

I hosted a call with government and legal reform expert Philip Howard last month.

Howard has devoted much of his career to investigating public-sector unions and how they became the most powerful political special interest in our country. He has exposed their lack of accountability and the heavy burden their collective bargaining agreements have imposed on taxpayers. He has shown how public employees here in Illinois receive inflated pensions far beyond what is considered fair and reasonable in the private sector.

We've paid from our present income, but our children will pay with their futures. Not only have teachers unions failed them in the classroom – with 4 out of every 5 Chicago Public Schools students unable to read at grade level – they're making them inherit a massive debt built up by fiscal mismanagement.

We've paid from our present income, but our children will pay with their futures.

"Most of the huge debt for public employee benefits in the future, incurred largely as a result of union demands, will not come due during the tenure of the political leaders who acceded to it, nor indeed to the voters

at that time," Howard said. "Our children must pay the bill."

In his new book, "Not Accountable," Howard mentions Illinois was one of the last states to include collective bargaining in its state constitution because Chicago Mayor Richard J. Daley believed public-sector unions would form a powerful political machine and bargain against the public interest.

It turns out Daley was right. One of his successors has now brought the agenda of the Chicago Teachers Union into the mayor's office.

But Howard has a solution to the problem of reckless public-sector unions, and it's not political – it's constitutional. He argues public-sector unions violate the Guarantee Clause of the U.S. Constitution, which forbids states from adopting any structure that might give operating control to an aristocracy or other permanent group.

Thank you to everyone who joined me on our call with Howard. You can learn more about his argument against public-sector unions on page 10.

In this issue of The Rail, you'll read:

- A breakdown of Pennsylvania unions' proposed constitutional amendment, which closely mirrors Illinois' Amendment 1.



- An analysis of the relationship between Illinois' pension crisis and population decline.
- Four solutions to combat "ComEd Four" corruption after all defendants were found guilty of bribing Mike Madigan for favorable legislation.
- A Q&A with Philip K. Howard, who shares his ideas on how to reform collective bargaining nationwide.

The fight against out-of-control, public-sector unions is a national one, but it's important we remain on the front lines of this battle – right here in Illinois.

The fight against out-of-control, public-sector unions is a national one, but it's important we remain on the front lines of this battle – right here in Illinois. If we can save our state, we can save our country, too. And you'll be the one who made it all happen.

If we can save our state, we can save our country, too. And you'll be the one who made it all happen.

Thank you for your commitment to restoring Illinois' freedom and prosperity.

In liberty,

Matthew



Matthew T. Paprocki
President and CEO
Illinois Policy Institute

Pennsylvania unions push misleading labor amendment modeled after Illinois' Amendment 1

Pennsylvania's House Bill 950 is worded exactly like Illinois' Amendment 1. Illinois labor leaders recently claimed Illinois' amendment is the "blueprint" for other states, such as Pennsylvania.

By Mailee Smith

Illinois has long been a bastion of union power, with unions nationwide taking their cues from what goes on in Illinois.

The latest example: unions in Pennsylvania are pushing a labor amendment worded exactly like Illinois' Amendment 1, which was passed by Illinois voters in November.

The Pennsylvania amendment won't be on the ballot until 2025 – if it makes it that far. It first has to clear both chambers of the Pennsylvania General Assembly in consecutive sessions.

In the meantime, voters will likely be bombarded with false messages from unions trying to trick them into thinking the amendment will protect workers. But as in Illinois, collective bargaining in Pennsylvania already is protected by federal and state law. The amendment is not necessary.

Here are three facts voters in Pennsylvania should consider from the Illinois experience.

The amendment cannot apply to private-sector employees

The language in the amendment appears to apply to all "employees" – both in the private and public sectors.

But the National Labor Relations Act governs private-sector collective bargaining nationwide. Anytime the federal government occupies a space, it preempts state laws that would attempt to do so.

The U.S. Supreme Court has already made it explicitly clear the NLRA precludes states such as Illinois from providing

rights or regulating unionization in the private sector: "States may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits."

Because the federal government already regulates collective bargaining in the private sector, states cannot do so through state laws or amendments. Even the Illinois amendment's sponsor in the Illinois Senate said the amendment could not apply to the private sector.

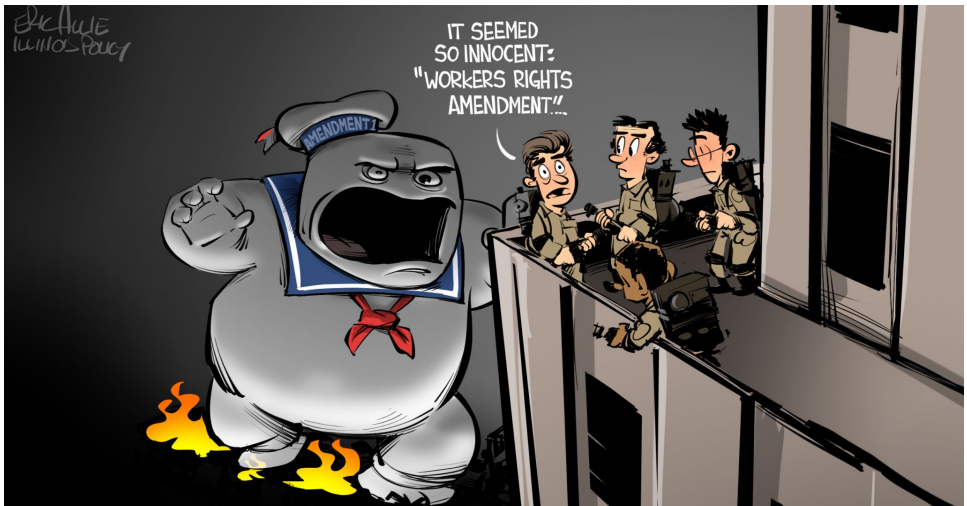
The only part of the amendment that could apply in the private sector is the last provision, which bans laws that would allow private-sector union workers to decide for themselves whether to join or pay a union. But that provision is a restriction on – not a right granted to – private-sector union workers, and it bucks the trend of the majority of states.

The amendment will drive up the cost of government, necessitating higher taxes

While the amendment cannot apply to private-sector unions, it does provide extensive power to government union leaders. They will be able to demand new contract provisions that will drive up the cost of government.

Government union power already drives up taxpayers' costs. Example: the current Chicago Teachers Union contract is estimated to cost taxpayers \$1.5 billion, according to the Chicago Tribune.

But the amendment's language broadens the demands government unions can make beyond wages and benefits to include undefined new subjects such as "economic welfare."



That could mean virtually anything. During a debate before the passage of Amendment 1 in Illinois, professor and Amendment 1 proponent Elizabeth Tandy Shermer admitted, “We actually don’t know what’s going to be in these union contracts. We don’t know at all.”

Those increased demands mean government contracts will cost even more money than in the past. Not to mention the more subjects there are to negotiate, the longer the negotiations will take – and the higher the cost for attorneys to simply get the contract finalized.

And that means taxpayers would be stuck in an endless loop of higher government costs and rising taxes under the amendment.

The amendment allows government unions to override state and local laws

The language of the amendment gives government union leaders the extraordinary power to override laws through provisions in their collective bargaining agreements.

The amendment doesn’t just guarantee a right to bargain over typical labor issues such as wages and benefits. Instead, it adds the generic terms “safety at work” and “economic welfare” to the mix of negotiable subjects – making the issues that can be negotiated virtually unlimited.

The language of the amendment also prohibits lawmakers from passing a law

interfering with, negating or diminishing its reach. That means lawmakers will never be able to limit what unions can demand in negotiations. They will never be able to restrict when government unions go on strike to get those demands met.

What’s more, the contracts created under the amendment will carry the weight of the constitution, allowing government unions to override state laws.

A review of Illinois’ state statutes revealed the amendment would allow government unions to override more than 350 provisions related to schools, children and other residents.

When a similar amendment was attempted by unions in Michigan in 2012, then-Michigan Attorney General Bill Schuette penned a memorandum explaining the amendment would overrule more than 170 existing Michigan laws.

After failing to pass the amendment in Michigan in 2012, unions waited 10 years before trying again. Now that they’ve passed it in Illinois, they aren’t sitting back for another decade.

Pennsylvanians, beware.



Mailee Smith is the senior director of labor policy and the staff attorney at the Illinois Policy Institute.

The connection between Illinois' pension and population crisis

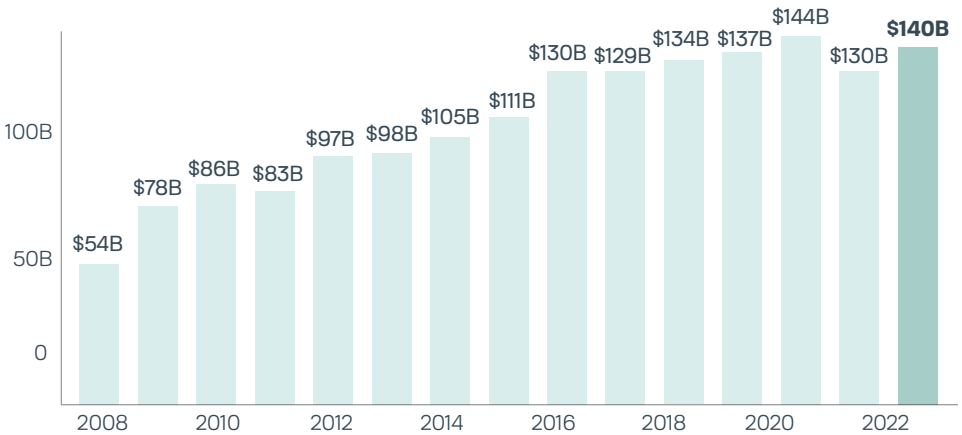
By Bryce Hill

Illinois' pension crisis is the driving force behind its high property taxes. With \$140 billion in unfunded liabilities in the five state-run systems alone, plus another \$70 billion in local pension system debt, state lawmakers' default solution has been to increase taxes, take on more debt or threaten service cuts. Local governments

keep raising and throwing property taxes at the problem. The right thing to do is to pursue pension reform, which would not only stabilize the state's finances but also help local governments get their own ballooning local pension costs under control. That would mean ... property tax stabilization. And, ultimately ... relief.

Illinois's state pension debt up to \$140 billion in FY 2022

State retirement systems combined unfunded pension liability based on market value of assets, fiscal years 2008-2022



Source: Commission on Government Forecasting and Accountability

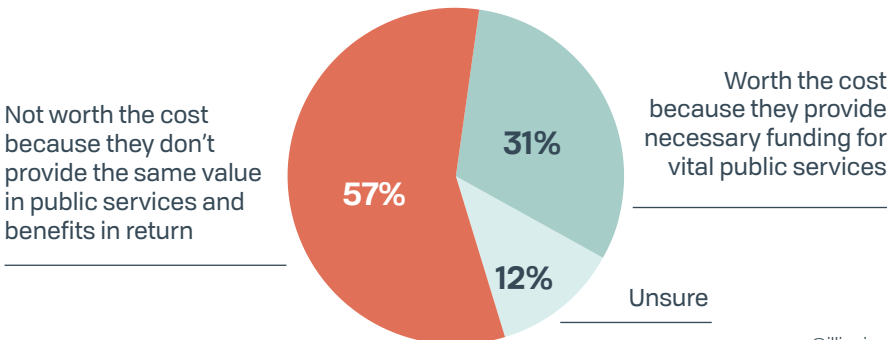
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Tax burdens. 57% of Illinois voters polled said their property taxes are too high. Many are leaving the state because of it,

according to new polling from Echelon Insights in partnership with our team here at the Illinois Policy Institute.

57% say amount they pay in taxes is not worth the cost compared to 31% who say taxes are worth the cost

Q: Which of these statements do you agree with more, even if neither is exactly right? The amount I pay in property taxes and other state and local taxes is...



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Kiplinger's annual state tax analyses at the end of last year found Illinois' second-highest property taxes, eighth-highest combined sales tax and above-average income taxes are costing middle-class families more than anywhere else in the country. *Again, more than anywhere else in the country.*

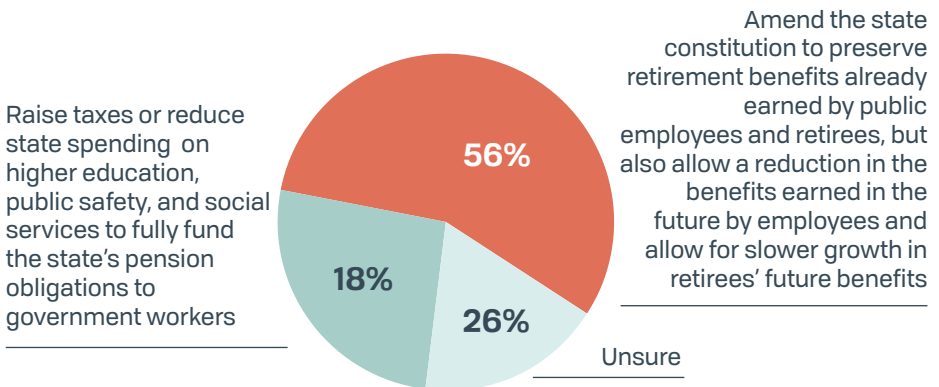
Illinois retirees pay the second-highest combined rates in the U.S. for property, sales, income and estate taxes.

The reports also determined Illinois retirees pay the second-highest combined rates in the U.S. for property, sales, income and estate taxes. Only retirees in New Jersey paid more. Of note: Senate Bill 140 in the Illinois General Assembly would repeal Illinois' estate tax. Lawmakers have stuck it in the assignments committee, where bills go to die.

Illinoisans prefer pension reform. New polling shows Illinoisans prefer to address the pension crisis by amending the Illinois Constitution as opposed to hiking taxes and cutting services – politicians' go-to, which is making Illinoisans go to other states. The poll found 56% supported amending the state constitution to reform pensions.

Majority of Illinoisans support pension reform

Poll of 800 Illinois voters from March 27-29 when asked which statement they agree with more, even if one isn't exactly right



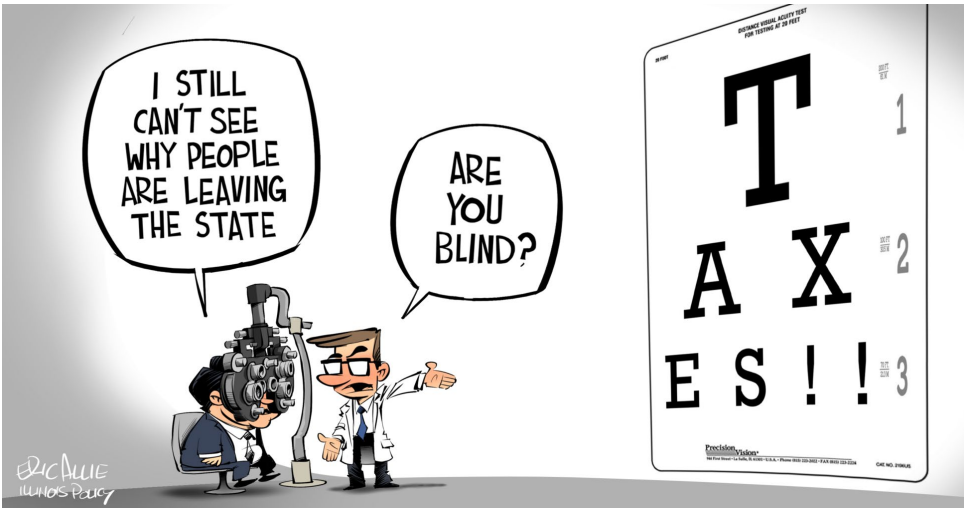
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The crisis. Since 2000, pension spending is up 584% in our state, while total spending grew by 21% and many vital services to the state's most vulnerable were cut by 20%. Illinois' annual pension contributions have historically been lower than actuaries said were needed, which is a major reason why the state's pension debt has continued to grow. Since the inception of the state's current funding schedule in fiscal year 1996, the state has shorted the funds by \$58.5 billion.

It's no surprise where funding problems are happening. What is surprising is our government leaders have failed to consider changes voters want and that would fix it.

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While Gov. J.B. Pritzker sent out one-time property tax rebate checks averaging \$200, Illinoisans' overall property taxes have still gone up \$2,228 since he took office.



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Is there really a solution? YES. Illinois lawmakers from both sides of the aisle in 2013 tried to fix the state's pension system by reducing cost-of-living raises for pensioners who served shorter careers but earned the highest salaries. The law was struck down by the Illinois Supreme Court in 2015 for violating the state's pension clause, which states benefits can't "be diminished or impaired." But a "hold harmless" pension reform plan, such as one developed by the Illinois Policy Institute and based loosely on the bipartisan 2013 reforms, could help eliminate the state's unfunded pension liability and achieve retirement security for pensioners. The 2013 reforms were rejected by the Illinois Supreme Court, which is why reform requires a change to the Illinois Constitution.

Lawmakers in Springfield must pursue pension reform to achieve retirement security for Illinois' public servants. Without reform, Illinois' unfunded liabilities will continue to grow and the state's pension systems will become even leaner. That puts the retirement of Illinois' public servants at risk, while also driving more Illinoisans out of the state as taxes rise unnecessarily.



Bryce Hill is the director of fiscal and economic research at the Illinois Policy Institute.

THE [POLICY] SHOP

The Policy Shop is a weekly podcast tackling Illinois' most important issues.

4 ways Springfield should combat 'ComEd 4' corruption

A jury found all "ComEd Four" defendants guilty of bribing Illinois House Speaker Mike Madigan in exchange for favorable legislation. It was an alarm for Springfield lawmakers that half-measures don't work and lasting ethics reform is needed in Illinois.

By Joe Tabor

After a jury found all "ComEd Four" defendants guilty of bribing Illinois House Speaker Mike Madigan, ethics reform was again being discussed in Springfield.

Discussed. Again. Without the legislature taking any action.

There are four concrete steps state lawmakers can take to turn talk into action that matters: slow themselves from becoming lobbyists, sharpen their watchdog's teeth, stop themselves from lobbying local leaders and strengthen their conflict of interest laws.

In the previous Illinois General Assembly, legislators took some very small steps toward reform in an omnibus ethics reform bill – such small steps that changes were found lacking by most good government groups. Legislative Inspector General Carol Pope resigned after they passed the omnibus bill, which not only did too little but also narrowed her jurisdiction.

But with the "ComEd Four" convicted and Madigan's trial approaching, there is a renewed push for ethics reform and another opportunity in the fall veto session. Here are four ways Springfield could begin to dismantle its culture of corruption.

1) End the revolving door

There should be at least a one-year buffer between the time a lawmaker leaves office and becomes a lobbyist. This would create a longer "cooling-off" period and bring Illinois lobbying restrictions more in line with other states. The current revolving-door provision contains a loophole that would allow lawmakers who complete their terms to leave office one day and lobby their colleagues the next.

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2) Empower the Legislative Inspector General

The omnibus bill gave the Legislative Inspector General the power to open investigations into potential ethics violations without first getting permission from the Legislative Ethics Commission, but it narrowed the scope of the inspector general's authority to only violations related to a lawmaker's official duties. The legislature's watchdog should have the authority to issue subpoenas for documents and witnesses and to publish findings of wrongdoing without getting permission from the peers of those being investigated. Lawmakers should also consider Pope's recommendations, including to add a ninth member – a non-lawmaker – to the commission.

3) Stop lawmakers from lobbying local governments

State lawmakers will often vote on legislation that can have a huge impact on local governments. For example, several proposals from newly elected Chicago Mayor Brandon Johnson would require action from the General Assembly. Lawmakers in Illinois can earn income by lobbying local governments on behalf of their paying clients. The conflict of interest is clear – state lawmakers have leverage over local governments that few other

lobbyists will possess. The practice should be prohibited.

To end the culture of corruption, Illinois should close this loophole and prohibit any state lawmaker from lobbying local governments in Illinois

The omnibus ethics bill restricted lawmakers from being employed as lobbyists only for a firm registered to lobby the unit of government they serve. This will tend to bar lawmakers from working as lobbyists for big firms but allows them to open their own shops and get around that restriction. To end the culture of corruption, Illinois should close this loophole and prohibit any state lawmaker from lobbying local governments in Illinois.

4) Give teeth to Illinois lawmakers' conflict of interest rules

Under the current law, Illinois lawmakers decide for themselves whether they have conflicts of interest and have discretion whether to disclose those conflicts or recuse themselves from voting. If a lawmaker has a personal, family or client legislative interest in a measure, under current law he or she should "consider the possibility of eliminating the interest creating the conflict situation." If the lawmaker determines that is not feasible, he or she should "consider the possibility of abstaining" from the official action. Furthermore, "if he does abstain, he should disclose that fact to his respective legislative body."

Legislators are on the honor system when it comes to revealing conflicts and eliminating themselves from voting in those cases. And while Illinois does require lawmakers to file general financial disclosure statements, a lawmaker is not required to declare when he or she faces a conflict before taking a vote.

Illinois lawmakers should be required to declare a conflict of interest before taking any official action. They should recuse themselves from voting on legislation when they have such a conflict. Much of the country already does so.

In addition to these four proposals, lawmakers should consider a pair of bills filed this past session to punish corrupt politicians. Senate Bill 1687 would prohibit General Assembly members from paying lawyers, expert witnesses and investigators with campaign funds. Senate Bill 2137 would impose a \$100,000 fine for legislators convicted of using their General Assembly office to commit a felony. Neither of these bills moved, but the convictions in the "ComEd Four" trial should prove they are needed.

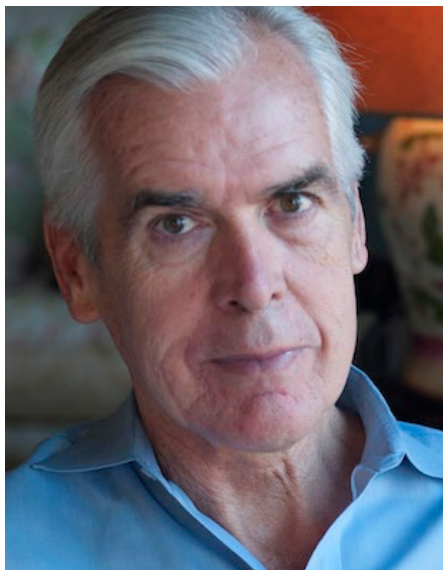
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The proposals won't fix everything that is wrong with Springfield, but they will begin to hammer at the foundations of the culture of corruption the "ComEd Four" again exposed.



Joe Tabor is the director of policy research at the Illinois Policy Institute.

Philip K. Howard: Public-sector unions are unconstitutional



Philip K. Howard is a leader in government and legal reform. He is the founder and chairman of Common Good, a nonpartisan coalition working to simplify bureaucratic structures and give officials and citizens the freedom to use common sense.

Philip is the author of the bestselling book “The Death of Common Sense.” His newest book, “Not Accountable,” makes the case that public sector unions disrupt the democratic process and should be ruled unconstitutional.

With the union-backed Amendment 1 codified into the Illinois Constitution, we invited Howard to speak about the way forward in our fight to expose the damaging effects of big labor. He joined us via Zoom on May 23 and had an excellent discussion with our president, Matt Paprocki, as well as our community of supporters.

Howard agreed to answer a few important questions for this issue of The Rail. In the following Q&A, he describes what he sees as the problem with public-sector unions and outlines why he believes they violate the Guarantee Clause of the U.S. Constitution.

We hope you find his perspective informative and valuable.

Q: Government unions slipped their “Workers’ Rights Amendment” past Illinois voters last year, solidifying collective bargaining in the Illinois Constitution and securing the power to override state and local laws. Illinois labor leaders say it’s a “blueprint” for other states. Now, Pennsylvania’s House Bill 950 is worded exactly like Illinois’ “Workers’ Rights Amendment.” Do you think we are beginning to see a new era of public sector union dominance in the U.S.? If so, how should free-market think tanks and elected leaders prepare?

A: The aggressive stance of Illinois Amendment 1 – providing that union contracts preempt statutes(!) – signals that unions see democracy as a process

For decades, unions have operated behind the opaque curtain of back-room deals and dense collective bargaining agreements.

of interest group power, largely unrelated to the public interest. Voters in this conception are pawns, moved around by manipulative messaging. For decades, unions have operated behind the opaque curtain of back-room deals and dense collective bargaining agreements. Now, as with the election of Brandon Johnson, they want to occupy the throne. It’s hard to see any course of action that doesn’t

involve trying to defeat the public unions constitutionally, at the ballot box and in the court of public opinion.

Q: Most unionized countries, such as Denmark, have workers' councils that address workplace issues, so unions don't negotiate with their political dependents. In the U.S., how could bargaining be reformed in union strongholds to limit union power over elected officials? Are workers' councils a practical solution?

A: I argue that organized political activity by public employee unions should not only be barred by statute but declared unconstitutional. Public employees owe a fiduciary duty to serve the public, not bargain against the public. Elected officials have a constitutional duty to manage public operations to serve the public, with a statutory duty to bargain in the public interest. Instead, elected officials and public unions collude in a payola scheme to give unions as much as they can get away with.

Public employees owe a fiduciary duty to serve the public, not bargain against the public. Elected officials have a constitutional duty to manage public operations to serve the public, with a statutory duty to bargain in the public interest.

A new system of public employment should be trustworthy for public employees as well as the public. Workers' councils might be one mechanism in such a system. But, if it operates as a union veto, it will become a tool for extortion, and the same abuses will soon emerge.

Q: The Guarantee Clause in Article IV of the U.S. Constitution forbids states from adopting any structure that might give operating control to an aristocracy or other permanent group. Abraham Lincoln invoked the Guarantee Clause to justify opposing secession. Abolitionists invoked the clause in their fight against slavery. Is the Guarantee Clause sufficient, by itself, to challenge the existence of public-sector unions?

A: The main goal of the Guarantee Clause is to prevent officials from selling or delegating official authority to private groups – whether to aristocrats or to any “favored class.” Without room for reasonable dispute, executive authority over public operations is now toothless because public unions have rigid entitlements and a veto over daily choice – say, refusing to return to the classroom during the pandemic. The Supreme Court has refused to rule in the few cases that have invoked the Guarantee Clause, on the basis that the cases involved political questions that should be decided by other branches. But whether an elected executive has authority to fulfill his or her constitutional responsibilities does not involve a partisan dispute. It involves precisely the delegation of constitutional authority that the Guarantee Clause is intended to protect against.

Q: If “decommissioning” public-sector unions is not feasible, what pragmatic steps can be taken to limit the power of these unions?

A: In addition to constitutional challenges, I feel it's important to mount a public campaign showing the harm caused by union controls: Real stories of waste and abuse; real stories of public failure; real studies of how much the waste adds up to. Chicago has 37 schools in which not one student is proficient either in reading or math. But it's impossible under union agreements to overhaul those schools. So, what's the point of democracy?

The Rail

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It's not easy to defeat a status quo system that has been in place for decades.

But that's exactly what we're doing at the Illinois Policy Institute.

Entrenched politicians have rigged our state's political system to benefit themselves and their special interests. They've prospered, while the rest of the state has suffered.



We're building a movement to counter this, and we're gaining momentum.

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Thank you for all your support in our fight to transform Illinois.