

A Very California Coup



Union members cheer during a rally held by the American Federation of State, County and Municipal Employees (AFSCME) at MacArthur Park in Los Angeles, Calif., June 20, 2012. (Jonathan Alcorn/Reuters)

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'Democracy is gone if this passes,' one former state senator said of the latest pro-government-union measure being considered in the capital.

FOR decades, California’s government unions have bankrolled the campaigns of politicians who, once in office, return the favor — rubber-stamping union demands, no matter how extraordinary. The results in education, fire safety, health care, infrastructure, housing, cost of living, taxes, and crime, for instance, have been catastrophic.

Now, state lawmakers are prepared to hand even more power to government-union leaders.

State senator Tom Umberg’s Senate Constitutional Amendment 7 would create a constitutional right to “economic well-being” for government workers and would prohibit California state and local officials from taking any action “that interferes with, negates, or diminishes the right of employees to organize and bargain collectively.”

Lawyers representing public employees could argue, for example, that a decision to close a school, end a failed program for the homeless, or build a road with nonunion labor would interfere with their union’s constitutional protections.

“Democracy is gone if this passes,” said former state senator John Moorlach, an aggressive advocate of pension reform and a frequent target of multimillion-dollar government-union political campaigns.

By privileging the rights of union members over nonunion workers, “SCA 7 will have a major negative impact on the state’s housing, environmental, and economic goals,” said Jason Pengel, chairman of the board of Associated Builders and Contractors.

From Sacramento to the state’s 482 city halls, SCA 7 “will give public-sector unions the most exhaustive power of any branch of government,” said Michael J. Lotito, an attorney at Littler Mendelson who is an expert on California employment law and the co-chairman of his firm’s Workplace Policy Institute.

Noting that just 15 percent of California building and construction workers are unionized, Pengel warned of possible efforts to prohibit the bulk of that workforce from participating in public projects. “Not only would this have a huge impact on employment rates in California as well as our economy, but it would also make public projects virtually impossible to complete,” Pengel said.

Despite the criticism, backers of state senator Tom Umberg’s bill signaled this week they have the votes they need to take their first steps in the legislature. In a matter of hours last week, the bill acquired more than 30 co-sponsors. Because it proposes a change to the state constitution, SCA 7 will require the approval of two-thirds of the members in each chamber before it is placed on the statewide ballot, presumably in the March 2024 statewide primary election.

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Should SCA 7 make it onto the ballot, the bill’s noise-to-signal ratio will make it almost incomprehensible to the average voter.

Start with the misleading title. Though it's called "The Right to Organize and Negotiate Act," SCA 7 has nothing to do with organizing or negotiating — rights already firmly established in state and federal law. It's the new "constitutional right" that causes all the mischief, elevating a public worker's "right to economic well-being at work" to the same status as free speech, freedom of religion, rights against unlawful search and seizure, and the like, all of which are (quite rightly) broadly construed by the state and federal courts because they are elevated by the Bill of Rights and state constitutions.

Then there's the suggestion among SCA 7 boosters that their bill will apply equally to private businesses. Experts disagree, noting that the National Labor Relations Act is the final word on private-sector-employment matters.

It gets worse. Labor experts predict that enforcement will fall under the California Private Attorneys General Act. PAGA, as it's called, has led to legal harassment of business owners alleged to have violated any number of state and federal versions of the Americans with Disabilities Act, Proposition 65, and workplace-harassment claims.

"All civil-rights law carries with it the bludgeon of awarding attorneys' fees to the prevailing parties," said labor attorney Gregory Rolen, a managing partner of Haight Brown & Bonesteel and chairman of his firm's public-sector-practice group. "Practically speaking, such cases are driven less by the merits than by the specter of exorbitant fee awards." He added: "As written, this would just create another such opportunity. The bill should be retitled 'The Plaintiff's Bar Formal Employment Act.'"

If SCA 7 passes, Moorlach predicts that California's economy will be based on just two functions: "In a good economy, government will hire more employees. In a bad economy, with tax revenue falling, government will simply have to raise taxes on the populace" because unions will argue in court that laying off employees would run afoul of the new rights created by SCA 7. "This steamrolling process is about to become explicit if the unions have their way."

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SCA 7 is part of a national effort on the part of government-union leaders in blue states. Consider Illinois's Amendment 1. Passed by that state's voters in November, it broadly prohibits any state or local-government action that "interferes with, negates, or diminishes the right of employees to organize and bargain collectively." Both laws broaden classes of employees that can be organized, even in violation of federal law.

Indeed, two months after its passage in Illinois, Amendment 1 led to the unionization of Chicago school principals and assistant principals. "The fact of being an essential employee is one reason management isn't typically unionized," the Wall Street Journal noted in January. "With two layers of union interests now lined up at schools, children become an even smaller concern of the union-bureaucracy education complex, if that's possible. . . . No wonder thousands of students and their families are leaving Chicago schools."

"California's proposed amendment's language broadens the demands government unions can make beyond wages and benefits to include undefined new subjects such as 'economic well-being,'" said Illinois Policy Institute attorney Mailee Smith. "That could mean virtually anything," Smith added. She pointed to

Amendment 1 proponent Elizabeth Tandy Shermer’s comment: “We actually don’t know what’s going to be in these union contracts. We don’t know at all.”

In Harrisburg in April, supporters of Pennsylvania’s H.B. 950 said it would merely “cement” or “enshrine” the “fundamental right to organize and collectively bargain.” In fact, opponents said, H.B. 950, potentially like SCA 7, would erect a permanent barrier to any change in the employment status of government employees and would expand the power of government unions more generally.

In public testimony, one of those critics called out the cut-and-paste quality of the Pennsylvania bill. “The bill language was taken verbatim from the Illinois state constitutional amendment narrowly approved last year,” observed David Osborne, a senior fellow for labor policy at the Commonwealth Foundation for Public Policy Alternatives. If passed in the legislature, Pennsylvania’s bill will go to state voters in 2025.

The stakes are high for California. Lotito says that if SCA 7 becomes law, “it cements California as the most anti-employer state in the country — and that includes government employers who are going to find themselves with decreasing power to resist even more unreasonable demands by unions.”