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The Public Safety Employer–Employee Cooperation Act Removes State Flexibility

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The Public Safety Employer–Employee Cooperation Act (H.R. 980) would force all state and local governments to collectively bargain with police officers, firefighters, and emergency medical personnel. Although this bill gives the appearance of respecting local control and flexibility, it actually severely restricts the freedom of state and local governments to tailor their policies to their needs. H.R. 980 would force states to negotiate subjects such as replacing a merit-based pay system with seniority-based promotions, which many local governments have found to be inappropriate in their jurisdictions. Congress should not force states and localities to recognize public sector unions as their employees' exclusive representatives.

Mandatory Exclusive Representation. H.R. 980 has nothing to do with employer–employee cooperation. Instead, the legislation requires state and local governments to recognize public sector unions as their public safety employees' (policemen, firemen, and emergency medical personnel) exclusive representatives. The act would force the minority of state and local governments that do not collectively bargain with their public safety employees to do so. It would also force the states and localities that do collectively bargain with their public safety employees to bargain according to the broad terms of the act.

The act appears to respect the principles of local control by leaving state and local laws that already provide for collective bargaining intact. In fact, this appearance is largely illusory. State and local governments would have only the authority to pass laws more expansive than those the federal government imposed; they would not have the authority to pass laws less sweeping than the federal versions.

Ending Local Control and Flexibility. H.R. 980 would end local control and flexibility. One of the great advantages of the federalist system of government is that it does not impose one-size-fits-all solutions. Different states and local governments have different needs and should be free to fit their policies to their individual needs. What works well in Los Angeles, California, may create headaches in Arlington, Virginia.

Whether a state should recognize a union as an exclusive representative, or should let individual workers negotiate the terms of their own contracts, is just such an issue. In some states, collective bargaining works well and promotes local flexibility. In other jurisdictions, it causes more problems than it solves. The frequent strikes by public school teachers in Detroit and the strike by transit workers that paralyzed New York City demonstrate that collective bargaining does not always work. States and local governments should have the freedom and the flexibility to experiment with different policies and adopt the one that works best. Washington should

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not impose monopoly union bargaining on every state and local government in the country.

Not All Issues Should Be Negotiated. Even where public sector collective bargaining makes sense, the public good demands that many terms and conditions of employment be kept off the bargaining table. Many states follow this practice and restrict the subjects of negotiation.

Merit-based promotions and raises encourage hard work and help put the best workers in the most sensitive positions. Public sector unions, however, strongly support seniority-based promotions and raises, and insist on them in negotiations. But even union-friendly states like Michigan and Wisconsin have passed laws specifying that police officers and state troopers earn promotions solely on the basis of merit and preventing unions from negotiating a seniority system.[1] Illinois prohibits negotiations over when police officers can use deadly force. Nevada prevents unions from bargaining over the size of the state workforce.[2] These are sensible restrictions that prevent unions from negotiating contracts that benefit their members at the expense of the public good.

H.R. 980 would remove virtually all these restrictions. Under H.R. 980, state and local governments would be forced to negotiate almost all "terms and conditions of employment" with public sector unions.[3] The act takes only state right-to-work laws and pension benefits off the bargaining table. It forces states to put virtually everything else up for negotiation, threatening merit-based pay systems nationwide.

Exclusive Representation Not a Fundamental Right. Supporters of H.R. 980 argue that the importance of collective bargaining justifies severely restricting state and local governments' flexibility. According to this view, collective bargaining is a fundamental right that every state must be forced to respect.

This view is mistaken. Freedom of association is a fundamental right. The ability of workers to freely join—or not join—unions is protected by the First Amendment to the Constitution. No state prevents its employees from belonging to a union.

However, the right to belong to a union does not imply a right to collective bargaining. Collective bargaining confers monopoly bargaining privileges on the union. The union exclusively represents all employees in contract negotiations—even those not in the union. This gives the union much more negotiating power, but harms workers who could negotiate a better individual deal with the employer. A non-union worker who prefers merit-based promotions must instead accept what the union negotiates for him.

Although there are some cases where collective bargaining makes sense and simplifies negotiations for all involved, this does not mean that unions have a fundamental right to exclusively represent all employees in contract negotiations, whether they want it or not.

Conclusion. Congress should not force every state and local government in America to adopt collective bargaining. Monopoly bargaining is not appropriate in every state, and Congress should not take away states' freedom to fit their laws to their individual needs. This policy would force states to negotiate conditions of employment—such as seniority systems instead of merit promotions—which are best left off the bargaining table. Congress should respect the ability of states and local governments to govern themselves and decide what best fit their needs.

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1. R. Theodore Clark, Jr., Partner, Seyfarth Shaw, LLP, "Testimony Before the Committee on Education and Labor, U.S. House of Representatives," June 5, 2007, at *http://edworkforce.house.gov/testimony/060507RTheodoreClarkTestimony.pdf*.
2. *Ibid*.
3. H.R. 980, Kildee Substitute Amendment, Section 4(b)(3). The act includes an exception for localities smaller than 5,000 people or with fewer than 25 full-time employees.