

COMMENTARY

Philip Howard: Public unions are hurting Illinois

By Philip Howard

Chicago Tribune • Feb 07, 2023 at 1:41 pm



Campaign signs are posted, including one for Amendment 1, outside a 44th Ward precinct location on Nov. 7, 2022, in Chicago. (Brian Cassella / Chicago Tribune)

Amendment 1 to the Illinois Constitution, [approved by referendum in November](#), was promoted as guaranteeing basic fairness for all workers. But it does something else — by prohibiting any new laws that might impinge on worker collective bargaining, Amendment 1 disempowers future elected officials from changing how government operates. Illinois voters will elect governors, mayors and legislators who have been disempowered from fulfilling their main constitutional responsibility: to make decisions on how to best operate government for the public good.

Union officials argue that Amendment 1 merely enshrines the right to collective bargaining. But collective bargaining by government employees has already disempowered Illinois officials from fulfilling their constitutional responsibilities.

Governors and mayors come into office with their hands tied by collective bargaining agreements that mandate grotesque inefficiencies. Trash collection in Chicago costs two to three times more what it would without convoluted work rules, according to a [Wall Street Journal report in 2011](#).

Accountability is near zero: Only two of 95,000 teachers in Illinois were dismissed for poor performance annually over an 18-year period, according to a 2005 investigation by the Small Newspaper Group. Any new circumstance — for example, how to operate government in a pandemic — requires union approval. The Chicago Teachers Union [refused to return to the classroom for just over a year](#). The loss in learning by underprivileged students, studies suggest, cannot be recovered.

Instead of electing officials empowered to manage government, voters in Illinois elect officials who, in daily choices as well as with vital trade-offs, can manage only with union approval. As [Mayor Lori Lightfoot put it](#), “They’d like to take over not only Chicago Public Schools, but take over running the city government.”

Government unions are often viewed as an unavoidable evil — like a fire-breathing dragon posted at the gates of government ready to devour any would-be reformer. Their political might is orders of magnitude greater than any other group: 33% of government workers in Illinois are union members.

Most people assume that public union power is a state of nature and that government unions are no different from trade unions. But that’s not accurate. Public bargaining was allowed in Illinois only 40 years ago. Until then, the prevailing wisdom, as [then-President Franklin D. Roosevelt put it](#) in 1937, was that “collective bargaining ... cannot be transplanted into the public service.”

The differences between government and business bargaining are stark:

- In business, trade unions have a vested interest in the efficiency of the enterprise. Otherwise, workers will lose their jobs when the business fails or moves elsewhere. But government can’t move or go out of business, and public unions bargain for unaccountability and inefficient work rules. The more jobs, the better. Taxpayers who foot the bill don’t see the leakage caused by union controls in multi-hundred-page collective bargaining agreements.
- In business bargaining, collusion between management and labor would be unlawful. By contrast, government bargaining is overtly collusive. Unions devote huge resources to getting officials elected, and then sit at the same side of the bargaining table. Public union bargaining is not a genuine negotiation. It’s a payoff.
- Finally, unlike business employees, public employees owe a fiduciary duty to serve the public. Union controls causing waste and unaccountability are a breach of ethical duties. As FDR put it, public employees have the “obligation to serve the whole people,” not themselves.

But what can you do about it? All these controls were authorized in statutes and, with Amendment 1, enshrined in the Illinois Constitution by vote of the citizens.

But there’s a higher power in America’s constitutional system. Giving unions power over official authority is a clear violation of a core principle of the U.S. Constitution: No official or legislature can delegate to private parties essential governing choices. “The power of governing is a trust committed by the people to the government,” the U.S. Supreme Court held in *Stone v. Mississippi*, “no part of which can be granted away.”

This “nondelegation doctrine” does not allow delegation of basic management authority to private groups such as unions. Nor, the Supreme Court has held, can current legislators and voters remove the authority of future leaders to make decisions, “which, from the very nature of things, must ‘vary with varying circumstances.’” Leaders “can govern according to their discretion, if within the scope of their general authority, while in power; but they cannot give away nor sell the discretion of those that are to come after them.”

The nondelegation doctrine is explicitly set forth in Article IV of the Constitution: “The United States shall guarantee to every State in this Union a Republican Form of Government.”

The “Guarantee Clause,” James Madison explained in *Federalist Papers* No. 39, precludes delegation of operational authority in states and cities to any “favored class” that is not accountable to voters: “It is sufficient for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by ... (their) tenures.”

Who has authority to fix a lousy school or fire a rogue cop does not involve a political question. The answer to this question is the core principle of constitutional governance. Without room for serious disagreement, public unions in Illinois have disempowered the governor and mayors from managing the operations of government for the benefit of “the whole people” during their elected “tenures.”

Because government in Illinois is, literally, out of the control of those elected to run it, the only realistic path for good government is to the U.S. Supreme Court.

Philip Howard is chair of Common Good, a nonprofit that advocates for simplifying government. His latest book is “[Not Accountable: Rethinking the Constitutionality of Public Employee Unions](#).”

Submit a letter, of no more than 400 words, to the editor [here](#) or email letters@chicagotribune.com.