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Senate Constitutional Amendment 7: Legislature's latest and most generous gift

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The California Legislature is poised to pass Senate Constitutional Amendment (SCA) 7, called "the Right to Organize and Negotiate Act." If approved by the voters, SCA 7 would grant all Californians the right to join a union and to negotiate with their employers through their legally chosen representative. The proposed amendment also provides that no ordinance or statute could be enacted that interferes with employees' right to organize and bargain collectively.

Details

SCA 7 would profoundly affect both the public and private sectors, raise the cost of governmental operations, prioritize labor costs over public services, hamstring public and private employers' ability to manage, impede economic development, serve as a "plaintiffs' mill" for lawsuits against employers, and make California an even more harsh and hostile environment for business.

According to the amendment's author, national efforts to dismantle union contracts and erode labor protections have increasingly favored the wealthy—widening the income gap and disproportionately affecting vulnerable groups of workers, especially Blacks, Latinos, immigrants, and women. The author also makes much of the "anti-labor efforts across the country," including right-to-work laws. While paying lip-service to California's strong labor laws, the author posits that SCA 7 is needed to protect the right to organize and negotiate and to affirm working Californians' most important asset in securing their futures.

Committee analysis

On June 23, 2023, the Senate Committee on Labor, Public Employment and Retirement analyzed SCA 7. It noted the amendment would confer collective bargaining rights to workers who aren't covered by the National Labor Relations Act (NLRA), such as independent contractors and agricultural workers who aren't yet unionized under the Agricultural Labor Relations Act. It would also apply to public sector workers who are exempt under state law.

The committee noted that NLRA-exempt supervisors—the mainstay of private-sector management—would also be covered by this legislation, as would managers and confidential employees. According to its analysis, SCA 7 could chill the ability of state or local officials to develop frameworks for administering collective bargaining, and that it fails to address how existing frameworks for administering collective bargaining would

be affected by SCA 7. Further, even if SCA 7 were good law, there's no reason it should be enshrined in the state constitution.

The Committee referenced another fundamental problem with SCA 7—it could upend the core principle of "exclusivity," whereby only exclusive collective bargaining speaks for all employees in a unionized bargaining unit. In an already unionized place of employment (prevalent in the public sector), SCA 7 on its face could enable rival unions to intrude into organized workplaces at any time, even if a union already represents the employees. Taken at face value, SCA 7 would allow a union to intercede at any place of employment and represent any employee regardless of their status and regardless of the systems already in place for administration of labor relations, creating an unstable, chaotic labor relations atmosphere.

We can well imagine that all these potential issues would give rise to protracted litigation—both about the reach of SCA 7 and about its evident conflict with the preemptive provisions of the NLRA. Indeed, the notion that any worker or any union has a right to demand negotiations with a private employer regardless of NLRA restrictions and without resort to the National Labor Relations Board's (NLRB) processes is, in a word, ridiculous.

Bottom line

As noted above, SCA 7 would prohibit the passing of any statute or ordinance that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and workplace safety. This open-ended language would prohibit any legislative reforms affecting labor issues. Consider, for example, how the crucial pension reform legislation enacted in 2012 would have fared if this amendment had been law.

California isn't alone in expanding the organizing rights of its residents. For example, Illinois voters enacted Amendment 1, prohibiting state or local government action that "interferes with, negates, or diminishes the right of employees to organize and bargain collectively." According to the National Review, this led to the unionization of principals and assistant principals in Chicago schools. Shortly after the Illinois voters enacted Amendment 1, the Pennsylvania Legislature considered H.B. 950, which if passed, would go on the ballot in 2025. H.B. 950 is a virtual replica of Illinois Amendment 1. SCA 7 may prove to have been the next domino played by the national labor movement.

As noted above, some commentators believe the NLRB's preemptive authority would render the bill unenforceable in the private sector. However, unions would argue that preemption doesn't apply to state laws that address employees and sectors not covered by the NLRA. For example, even if gig workers are independent contractors under California law and thus potentially not covered by the NLRA (though the Biden administration is moving to reverse this gap), they are Californians, so they could maintain SCA 7 gives them bargaining rights irrespective of NLRA coverage.

SCA 7 is supported by tens of labor organizations, plus the Office of Lieutenant Governor Eleni Kounalakis and Superintendent of Public Instruction Tony Thurmond. It's

opposed by an even larger number of public and private employers and employer councils. Constitutional amendments require a two-thirds vote by each house of the legislature. If it passes, it would likely appear on the March 2024 primary ballot.

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