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Labor Watch

Michigan's Prop 2: The Great Union Power Grab

Government unions try to set themselves up as a super-legislature—and fail

By F. Vincent Vernuccio

Summary: *Led by a reform-minded governor, Michigan enacted a series of reforms to rein in government unions that were bankrupting the state. The unions responded with a proposed amendment that would have given them unprecedented power to overturn state laws. Despite Michigan's history as a strongly pro-union state, voters resoundingly rejected the amendment—proving that reform is possible almost everywhere in the country.*

During the campaign, voters were bombarded with messages about Proposal 2.

In Wisconsin, Indiana, and elsewhere around the country, governors, state legislators, and other officials are taking a stand against the unbridled power of labor unions. They are working to pull state and local governments back from the brink by limiting the ability of unions to drive governments into insolvency.

The unions are fighting back, of course, losing sometimes (as in the failed recall of Wisconsin Governor Scott Walker and the failure to stop Indiana from becoming a right-to-work state) and winning sometimes (as with the repeal of reforms in Ohio).

But last month on Election Day in Michigan, unions lost a key battle that may help determine that state's direction for decades—a battle with implications far beyond the Great Lakes State's borders. By 58% to 42%, Michigan voters rejected a measure that would have made unions supreme in the state and become a model for the expansion of union power nationwide.

Here's how the fight began: Gov. Rick Snyder, elected in 2010 as a reformer, faced a budget deficit of some $2 billion a year. To save Michigan from financial ruin and rein in the power of the unions that were bankrupting the state, he pushed through a series of reforms: requiring government workers to pay 20 percent of their healthcare premiums, making it easier to fire incompetent teachers, and protecting the privatization of food, busing, and custodial services from collective bargaining agreements. The changes were projected to save the state $1.6 billion a year, which works out to almost $650 annually for an average family of four in Michigan.

December 2012

Unions responded with a Hail Mary pass, a quick and decisive counter to the labor reform movement. It was a measure known as Proposal 2, which its union supporters dubbed the "Protect Our Jobs Amendment." This ballot initiative to amend the state's constitution would have overruled, in whole or in part, more than 170 existing state laws and 18 provisions of the state constitution. It would have banned future reforms and kept Michigan from ever becoming a right-to-work state (that is, a state in which you cannot be required to join a union in order to get or keep a job).

Prop 2 would have written government unions' collective-bargaining powers into the state constitution, invalidating any "existing or future" state laws that "abridge, impair, or limit" those powers. It would have prohibited elected representatives from enacting future laws concerning wages, hours, and other terms and conditions of employment if those laws conflicted with collective bargaining agreements. In other words, government union contracts would have taken priority over state laws and even the state constitution. In effect, the measure would have turned those unions into a super-legislature, with the ability to override the work of the actual legislature. (An exception: the state could still ban strikes by government employees.)

Prop 2 would have granted government unions more power at the bargaining table by removing limitations on issues that could be the subject of collective bargaining. The sky would have been the limit with regard to government employees' pay, benefits—including pensions and healthcare for current and retired workers—and working conditions. Contracts with government unions could have voided the pension reforms that, since 1996, helped Michigan taxpayers avoid as much as $4.3 billion in government pension underfunding.

Paycheck protection and dues check-off

One section of Prop 2 would have amended Michigan's constitution such that –

> No existing or future law of the State or its political subdivisions shall impair, restrict or limit the negotiation and enforcement of any collectively bargained agreement with a public or private employer respecting financial support by employees of their collective bargaining representative according to the terms of that agreement.

This section was designed to make it easier for unions to take forced dues from members to pay for political causes that members may not support. It tacitly acknowledged that union power is rooted largely in such involuntary "contributions." Prop 2 would have invalidated any law protecting workers from such abuse. In fact, the amendment would have made it impossible for the state to ban "dues checkoff" clauses, under which government entities themselves do the unions' dues-collection for them by withholding dues automatically from government workers' paychecks.

Another target of this provision was a 1994 amendment to Michigan's campaign finance law. The 1994 "paycheck protection" amendment gave unionized workers the right to refrain from contributing to a union's "segregated fund" for its political action committee (PAC). Further, the law prohibited dues from being collected "on an automatic or passive basis including but not limited to a payroll deduction plan or reverse check off method." ("Reverse checkoff" means that dues are automatically withheld unless an employee demands otherwise. Because few workers are aware of their rights, and fewer still are willing to take affirmative steps in the face of union pressure, "reverse checkoff' generally means that the unions get their money.) According to James Sherk of the Heritage Foundation, paycheck protection typically cuts union campaign donations to state legislative candidates roughly in half.

If Prop 2 passed, unions would have been able to bargain away the 1994 paycheck protection law. Workers' rights in this regard would have been limited. They would have retained their "Beck rights," stemming from the Supreme Court case *Communication Workers v. Beck*; they could still have refrained from paying for some union politics, but they would have had to resign their union membership.

Again, most workers do not know they have these rights and few exercise them because of the difficulty in jumping through the bureaucratic hoops required to exercise those rights. Typically, workers have only a small window of time in which to write a letter asking to opt out of the political

Editor: Steven J. Allen
Publisher: Terrence Scanlon
Address: 1513 16th Street, NW
Washington, DC 20036-1480
Phone: (202) 483-6900
Email: sallen@CapitalResearch.org
Website: CapitalResearch.org

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portion of their dues. In response, they get a letter called a Hudson Notice that tells them how much they can opt out of. But, as you might expect, the amount never reflects the true amount of political spending by the union. Much of the unions' overhead expenses, various forms of intra-union communication, and other elements that ought to be counted as political are not covered under the Beck rules.

Beck rights are a poor substitute for paycheck protection (and both are inferior to allowing workers the choice to join a union or not). Prop 2 would have negated workers' ability to easily refrain from paying for their union's politics. It would have voided Public Act 31, passed this year, which stopped automatic payroll deductions for union dues from teachers' paychecks.

Education reforms

Prop 2 would have nullified many of the education reforms that have put a priority on performance, quality, and cost savings over entrenched bureaucratic work rules in Michigan. These reforms, passed in 2011, revised the standards for allowing public school teachers to be granted tenure, made it easier to revoke tenure of ineffective teachers, protected talented new teachers from "last hired/first fired" rules, and put school administrators and elected officials in charge of staffing decisions while prohibiting teachers' unions from bargaining over these decisions. The reforms, including merit pay and changes to the discipline system, were designed to reward good teachers and remediate ineffective ones.

Other reforms promoted the privatization of non-instruction services. More than half of Michigan school districts contract out for transportation, janitorial, and cafeteria services. A number of school districts have each saved taxpayers over a million dollars through privatization. Under Prop 2, these privatizations could have been revoked by union contracts.

Keeping secrets

The amendment was so broad that it would have made it possible to classify significant information involving government employees as secret. Under Prop 2, a collective bargaining agreement could have specified that certain documents would no longer be subject to the law requiring public disclosure of government records. These could include teacher evaluations, government e-mails of unionized workers, school and municipal budgets pertaining to personnel costs (costs that make up the vast majority of such budgets), or almost anything pertaining to wages, benefits, or working conditions. In a Catch 22, the collective bargaining agreements which supersede parts of the disclosure law could render themselves off-limits to public inspection.

As Michael LaFaive of the Mackinac Center noted in a *Detroit News* op-ed, "the initiative could restrict access by the public and the media to information about government's inner workings by effectively gutting Michigan's Freedom of Information Act. FOIA guarantees that the public has the right to view or get copies of public documents, albeit with a limited number of exceptions. It is a powerful tool that has helped journalists and private citizens uncover wrongdoing, expose waste and abuse and otherwise help pull back the curtain on government

Michigan, California, New Hampshire: Unions lose some, win some on Election Day

Also in Michigan: Another pro-union measure—one sponsored by the SEIU to make it easier to force state-subsidized home healthcare workers into unions—was defeated. The amendment would have locked into place the system created under former Governor Jennifer Granholm in which the workers were designated, absurdly, as government employees subject to unionization. (It would have reversed a court ruling protecting the rights of the workers, many of whom are simply providing care for family members and have no interest in joining a union, much less in paying union dues. See "Battle Plan of the Shadowbosses" in last month's issue of *Labor Watch*.)

Unions in Michigan also failed in their effort to elect a left-wing majority to the state Supreme Court. On the other hand, unions scored a victory in the narrow defeat of an amendment that would have allowed state-appointed "emergency managers" to change union contracts and otherwise take steps to protect local governments from fiscal collapse.

Meanwhile, in California, unions were successful in defeating an amendment that would have restricted their ability to use members' dues to support political efforts that those members oppose. That reform measure, Prop 32, had a lead of more than 20 points in a mid-August poll, but went down to defeat as the Left swept the state.

In New Hampshire, unions were successful in helping Democrats hold on to the governor's office and take control of the state House, effectively ending efforts to enact a state right-to-work law. – SJA

operations. Under Prop 2, nothing would prevent state or local government officials from signing a union labor contract that prohibits disclosing information otherwise protected by FOIA. They could even make the collective bargaining agreement itself subject to government secrecy, and the Legislature would be helpless to halt the process."

The FOIA aspect led some in the news media who usually support union-backed measures to oppose Prop 2. Even the Michigan Press Association (MPA) warned about the harmful effects Prop 2 would have on transparency. In an October statement, MPA president Jim Young, publisher of *Oceana's Herald-Journal*, said, "Even with FOIA in effect, governments can make it hard to report vital news that affects Michigan citizens directly. . . . Proposal 2 offers a change to the constitution that could have chilling effects on citizens' right to know."

What *isn't* on the table?

No one doubts that Prop 2 would have overridden a host of typical labor laws such as those regarding pensions, work rules, and wages and hours. Worse, in the era of the "living constitution," in which judges feel free to twist laws in order to achieve political outcomes, courts might have—most likely, would have—interpreted Prop 2's language in new and unexpected ways.

Under Prop 2, a court may allow collective bargaining agreements to supersede laws which at first blush have nothing to do with labor negotiations. For example, a government union could win at the bargaining table the ability to smoke indoors on the job in a public building. If a court interpreted this contractual clause as a "term and condition of employment," Prop 2 would supersede Michigan's public indoor smoking ban.

Courts have interpreted things as mundane as the price of candy in a vending machine to be germane as "terms and conditions of employment." If the price of a Snickers bar is bargainable, what would be off limits if no state laws could constrain union contracts?

A massive campaign

Prop 2 was an absolutely unprecedented power grab by government unions, and the fight over Prop 2 was one of high risks and high rewards. The measure's significance was evident from the attention it received from newspapers, unions, and free-market groups across the country. The State Policy Network's *SPN News* called it "America's Most Important Ballot Question." The *New York Times* called it a "Test Case on Enshrining the Rights of Unions."

The national implications were underscored when United Auto Workers president Bob King, one of the amendment's main backers, announced his plans for Prop 2 not in Michigan but in Washington, D.C. A victory would have led unions to try the same tactic in many of the 18 states that allow voter-initiated amendments to the state constitution.

Just to put the measure on the Michigan ballot, unions spent an estimated $8 million. By late October, their acknowledged spending totaled $21 million, and estimates put the final cost of the pro-Prop 2 campaign at $23-30 million. That's in addition to the regular day-to-day cost of maintaining and operating the unions' political machine. Pro-reform groups, including the business community, responded with a campaign against Prop 2 that cost an estimated $25 million.

The combined spending of supporters and opponents made it by far the most expensive ballot question in Michigan history. Prop 2 "drives everything else we're doing," said the UAW's Bob King. He said Prop 2 would "send a message" to other states in the wake of Indiana's recent adoption of a right-to-work law.

Throughout the campaign, Prop 2 supporters maintained the false narrative that the amendment would "protect" collective bargaining for all employees, public-sector and private-sector alike. In one ad, supporters claimed that "Proposal 2 does not force a single person to join a union. It does not repeal a single law or statute." They made this claim despite the fact that section 3 of the amendment clearly stated that "No existing or future law of the State or its political subdivisions shall abridge, impair or limit" unions' collective bargaining powers.

The Protect Working Families Ballot Committee (PWF), the pro-Prop 2 organization, ran a website that featured a list called "Main Street Supporters," including almost 600 businesses that, PWF claimed, favored the measure. Among those was a candy company, Kilwins. But when a reporter contacted the company's president about its appearance on the list, he said, "What's the address that they got that on? . . . Because that's absolutely not our position."

With the help of the Franklin Center for Government and Public Integrity, the Mackinac Center investigated a number of the Main Street Supporters. Many did not have websites, nor were they listed in online business databases. One went out of business

a year ago, before supporters of Prop 2 even started gathering signatures.

PWF also produced a misleading commercial with a firefighter in full protective gear telling voters Prop 2 "means we negotiate for gear we need, to protect your lives and ours. If it comes from collective bargaining, the politicians can't cut it without our say-so." But according to Michigan State Fire Marshal Richard Miller, many fire departments are staffed by nonunion volunteers, equipment is only "sometimes" negotiated in union contracts, and "most departments follow standards set by the National Fire Protection Association."

Throughout the campaign, supporters of Prop 2 accused opponents of hyperbole. They pointed to advertising by the group Citizens Protecting Michigan's Constitution, one of the main organizations opposed to the amendment, which claimed: "Among the laws that could be overturned upon passage of the deceptive proposal are protections for students that require the suspension of teachers accused of having sex with students and a law enabling school districts to fire teachers who lied about their criminal history during the hiring process."

The reference to sexual predators in the classroom simply went too far, Prop 2 supporters claimed. PWF demanded that the ads be pulled, arguing that union contracts would never allow improper activity by teachers. Then the Mackinac Center uncovered the union contract for the Bay City Public Schools, which allowed teachers to come to school drunk five times, or be caught selling drugs to students three times, before they could be fired. Point made.

Election Day

The crushing union defeat in Michigan, by 58% to 42%, came on the same day that President Obama carried the state by nine points and Sen. Debbie Stabenow (D-Michigan) was re-elected by almost 21 points. It happened in a state that is the birthplace of the United Auto Workers and has the fifth highest percentage of union members in the country.

Again, had Prop 2 passed, organized labor unions would have tried to spread the concept to other states. Richard Trumka, president of the AFL-CIO, told the *New York Times* that, "If it's successful, we will continue to make efforts like that in other states to prevent future attacks on collective bargaining, like those in Wisconsin." You probably know the story: Wisconsin, the birthplace of modern liberalism, endured a year-and-a-half long battle between unions and labor reformers. The state saw Democratic Senators fleeing the state to avoid voting on Gov. Scott Walker's budget repair bill. But the Walker reforms passed, giving government workers the right to choose whether or not they wanted to pay a union to represent them. When Wisconsin stopped automatically deducting membership dues from public employees' paychecks and gave them the option to refrain from paying the union, large numbers of workers chose to keep their money. AFSCME, the state's largest government employee union, lost more than half its membership in a single year.

After Walker's reforms passed, recall campaigns targeted a state Supreme Court justice, members of the legislature, and Walker himself. Yet the Supreme Court justice survived a smear campaign, the state Senate majority for reform was lost briefly but regained in November, and, famously, Walker won the recall by a bigger margin than that by which he had originally been elected (for the full story, see *Labor Watch*, July 2012).

The Midwest was organized labor's traditional stronghold. But as industry moved to Southern states (in part because of that region's more flexible labor laws) and as the economy changed, union membership dropped and union power waned. Today, there are more unionized workers in the public sector than in private industry—and, as the public begins to understand the costs and the level of corruption associated with public-sector unions, more and more people are coming to agree with President Franklin Delano Roosevelt that "the process of collective bargaining, as usually understood, cannot be transplanted into the public service." Prop 2's defeat shows that the reformers have the momentum. The tide is turning in favor of workers, taxpayers, and job creators against the union special interest.

F. Vincent Vernuccio is director of labor policy for the Mackinac Center for Public Policy in Michigan.

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LaborNotes

Hostess Brands, the maker of such iconic products as **Twinkies**, **Dolly Madison** pies, and **Wonder Bread**, sought court permission to go out of business after a series of labor problems that culminated in a crippling strike. The strike by members of the **Bakery, Confectionary, Tobacco Workers and Grain Millers International Union** crippled its ability to produce and deliver products. (Hostess came to an agreement with its largest union, the **Teamsters**, and the Teamsters—given access to the company's books—warned their sister union that the company wasn't bluffing about its dire financial condition.) Union officials blamed mismanagement for the company's problems and, according to the *Atlantic*, unions were "holding fast against the company out of fear that too many concessions will lead other companies to gut wages and benefits everywhere." Prior to the strike, Hostess had 36 bakeries, 565 distribution centers, 570 bakery outlet stores, and more than 19,000 employees. According to the ***Washington Post***, the president of the BCTWGMIU makes more than $210,000 a year and its secretary-treasurer almost $197,000.

Many coal miners and others whose livelihood depends on coal were turned off to **President Obama**'s re-election by the President's "**War on Coal**." (See the "Notes" section in this month's issue of our sister publication ***Green Watch***.) For the first time since 1972, the **United Mine Workers of America** declined to endorse the Democratic nominee. But **Richard Trumka**, president of the **AFL-CIO** and a former head of the mine workers, had a scapegoat for U.S. **Environmental Protection Agency** rules that are helping to shut down the coal industry: **Mitt Romney**. "Those EPA rules were ordered by the **Supreme Court** as a result of a lawsuit by Mitt Romney's state when he was governor. If there is a 'War on Coal,' it starts and ends with Mitt Romney." In fact, the official who spearheaded the lawsuit was the state's attorney general, a Democrat elected separately from then-Governor Romney. Romney opposed the ruling.

Trumka, by the way, claimed a few days before the election that unions were going to deploy 128,000 volunteers over "the final four days" of the campaign, knocking on 5.5 million doors and making 5.2 million phone calls. It's impossible to verify Trumka's numbers regarding union campaign workers, but political observers believe the Obama campaign operation was the most sophisticated ever deployed and that unions played a critical role. After Obama won the key states of **Ohio**, **Wisconsin**, and **Nevada**, Trumka claimed: "We did deliver those states. Without organized labor, none of those states would have been in the President's column."

U.S. Rep. **Marsha Blackburn** (R-Tenn.) denounced the first-ever collective bargaining agreement between the **American Federation of Government Employees** and the **Transportation Security Administration** (TSA), saying that the agreement "allows unions to claim a greater stake in dictating our national security." She said that TSA is "doubling down" on union demands rather than "focusing on the traveling public." Blackburn said that TSA, intended to be a national security agency in the mold of the **FBI** and the **CIA**, is failing in basic functions such as performing background checks, providing security training, and firing or retraining screeners who fail to detect threats.

In the aftermath of **Hurricane Sandy**, people from across the country headed to the affected region to help. Yet non-union workers met resistance from local unions. For example, as noted by **Scott Walter** of the **Capital Research Center**, **International Brotherhood of Electrical Workers Local 1049** on **Long Island** demanded that non-union crews from **Florida** sign a "contract" before they would be allowed to help out, agreeing to "normal working hours and overtime" as in the union's agreement, the "contribution" of $9.75 an hour to the Union Health and Welfare Fund, 22.5% of each employees' gross salary into the union's Craft Annuity Fund, 3% for the Craft Division Skill Improvement Fund, 3% for the National Electrical Benefit Fund, more for four other funds, and, of course, 1% of gross payroll for IBEW union dues.