

45. PUBLIC EMPLOYEE UNIONS AND THE CONSTITUTION

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For Immediate Release

Former Senator Schmitt Finds Public Employee Collective Bargaining and Binding Arbitration Unconstitutional

The constitutionality, as well as the common sense and fairness of collective bargaining for teachers and other public employees, has been brought to the fore by events in Wisconsin, Indiana, Ohio and other states. Of particular note and immediate importance are attempts to balance state budgets and eliminate growing state deficits—and the protests organized to fight such efforts. In addition to supporting the public employee unions and opposing Governor Walker and the majority of legislators in the Wisconsin dispute, President Obama has made the dangerous decision to allow collective bargaining by employees of the Transportation Security Administration (TSA).

The 9th Amendment of the Constitution of the United States guarantees the natural right of free association along with other rights that come by nature to a free people [see essay [No. 36](#)]. The 5th Amendment, however, guarantees that no American “shall be deprived of life, liberty, or property, without due process of law”. This 5th Amendment guarantee should prevent governments from obligating portions of taxpayer incomes by entering into collective bargaining and binding arbitration agreements with public employees.

In the private sector, constitutional collective bargaining and binding arbitration agreements may deprive shareholders of stock or dividend value. Shareholders, however, always have the option to liquidate their interests in a particular private company if bargaining or arbitration with unions hurts the value of their stock. In contrast, negotiated increases in the cost of pay, pensions, health insurance, and other benefits for public employees deprive taxpayers of their property, that is, incomes, without having access to “due process” during the negotiations between unions and governments.

Use of union dues derived from taxpayer funded public employee incomes raises an additional constitutional question. Those dues not only support lavish salaries and benefits for union officials, but they are also used to disproportionately fund the political campaigns of one political party (often against the will of individual members). Thus, this political use of public employee dues effectively has taxpayers supporting one political party, again without “due process.” Public employee union dues become even more constitutionally egregious when state and local governments automatically collect these dues and turn them over for the unions’ private use.

If collective bargaining and binding arbitration are unconstitutional, how should those public employees responsible for public safety be dealt with equitably? Once again, constitutional means to solve this problem exist. Elected officials should be charged by the electorate with providing pay and benefits commensurate with the enormous responsibilities and dangers of public safety employment (e.g., fire fighters and police officers). If they do not, then, at the next election, these officials should be replaced with new officials that will.

Finally, the constitutionality of government-sanctioned union shops also should be questioned vigorously. Union shops are those workplaces where potential employees must become a union member to get or hold a job. The 9th Amendment to the Constitution reserves all inherent natural rights to the people. Among those natural rights is the right to work, thus making mandatory union shops specifically unconstitutional. Right to

Work laws in many states merely reinforce what is a constitutional right of all Americans.

The political battles being waged in many states to balance budgets and create economic growth and employment constitute one of the most critical internal confrontations in the history of the United States. Democrat elected officials, including the President, do not provide rational or credible support for these budget efforts. Indeed, their active opposition again emphasizes the importance of continuing the 2010 conservative revolution into the 2012 election cycle.

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