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## **Economic Competitiveness and Job Growth Package**

Illinois needs to become more competitive in order to increase jobs and grow the economy:

- *Chief Executive Magazine* ranked Illinois 48<sup>th</sup> among top states for business;
- We have the 7<sup>th</sup> highest workers' compensation costs in the country;
- We have the 9<sup>th</sup> highest unemployment insurance taxes in the country;
- We have one of the worst lawsuit climates in the country, ranking 46<sup>th</sup> out of 50;
- We're last in job growth among our neighboring states; and
- More than 94,000 Illinoisans moved out of state last year.

We need to make Illinois a growth state again. That means structural reforms to major cost drivers for businesses. This legislative package:

- Transforms our workers' compensation system to bring costs in line with other states;
- Reforms our judicial climate to rein in frivolous lawsuits;
- Adopts commonsense changes to our unemployment insurance program;
- Empowers voters to choose if workers should be forced to join a union or pay fair share fees as a condition of an employment and allow local communities to compete by enacting local empowerment zones; and
- Phases in a minimum wage increase to \$10 an hour.

## Workers Compensation/Minimum Wage Reform

### **Background**

According to the 2014 Oregon Workers' Compensation Premium Rate Ranking Summary, Illinois has the 7<sup>th</sup> highest workers' compensation costs in the country. These high structural costs drive jobs to other states, including Indiana, where workers' compensations costs are more than 50 percent less.

### **Causation**

Workers' compensation is a no-fault system. To recover on a workers' compensation claim, the employee bears the burden of showing s/he has sustained accidental injuries *arising out of and in the course of employment*.

Currently, if the employment is related at all to the injury, no matter how indirectly, the employee's injury is compensable. If a work injury aggravates a pre-existing condition even slightly, the employer is 100% liable for the workers' compensation claim.

Twenty-nine states have a higher causation standard than Illinois. Missouri, Kansas, Oklahoma and Tennessee recently passed laws requiring the workplace to be the *primary* cause for workers' compensation to be compensable. Florida's major contributing cause standard is identical to the one we are proposing.

### *Proposal*

- The causation standard should be raised from an "any cause" standard to a "major contributing cause" standard. The accident at work must be more than 50% responsible for the injury compared to all other causes.

### **AMA Guidelines**

The 2011 reforms added the use of AMA Guidelines as one of five factors in determining permanent partial disability (PPD) awards. The AMA Guidelines are more conservative in determining the awards and thus it was hoped that allowing Commissioners to use these guidelines would reduce awards. While complete data on the use of AMA guidelines since 2011 is not yet available, a study of 20 cases from the IWCC shows a 12.24% reduction in awards when using the AMA guidelines. Indiana requires mandatory use of the AMA guidelines when determining permanent partial impairment which results in lower permanency awards.

### *Proposal*

- The language that limits the Commission from using only one of the five factors to determine PPD should be eliminated. This will allow (though not mandate) a Commissioner to solely base an award on the AMA guidelines.
- The language that limits a Commissioner to only considering a treating physician's medical records should also be eliminated. Instead, the Commission should be able to review both a treating physician's and an independent medical examiner's records to provide a more balanced view of the medical condition.

### **Traveling Employee**

The Illinois Appellate Court has greatly expanded the scope of what constitutes a "traveling employee" for purposes for workers' compensation. For example, an employee's injuries were found to be compensable when that employee slipped and fell on the way to work.

### *Proposal*

- What constitutes travel for the purposes of workers' compensation should be narrowed.

- An employee would only be able to recover workers' compensation while traveling if the travel was necessary for the performance of job duties. The employee must receive reimbursement for the travel or use a company car, and the travel must be required by the employer.
- This change, in addition to the heightened causation standard, will greatly limit the situations in which an employee "traveling for work" is able to recover.

### **Fee Schedule Reduction**

Even with the 2011 reforms, workers' compensation medical fees in Illinois are significantly larger than the median of other states. Surgery costs are the most egregious fee schedule abuses, with rates 300%-400% above Medicare rates and 100%-200% above group health. Illinois costs are 40%-60% higher than other states for radiology and emergency services and 90%-100% for pain management injections and surgery. Research has shown that a 30% fee schedule reduction would result in a 15%-20% reduction in medical claim costs.

#### *Proposal*

- Reduce the fee schedule by 30% for all services except evaluation and management (office visits), and physical medicine (physical therapy, chiropractic visits and occupational therapy).

### **Minimum Wage**

A minimum wage increase should only come in conjunction with workers' compensation, lawsuit, unemployment insurance and employee empowerment zone reforms to reduce costs on employers.

#### *Proposal*

- If the aforementioned reforms are enacted, amend the Minimum Wage Law to increase the minimum wage by an increment of \$0.25 per hour each year beginning in 2016 and ending in 2022.
- Increase the minimum wage from \$8.25 to:
  - \$8.50 on January 1, 2016
  - \$8.75 on January 1, 2017
  - \$9.00 on January 1, 2018
  - \$9.25 on January 1, 2019
  - \$9.50 on January 1, 2020
  - \$9.75 on January 1, 2021
  - \$10.00 on January 1, 2022

## Unemployment Insurance Reform

### **Background**

Illinois unemployment insurance should be fair for beneficiaries and employers. Right now, Illinois ranks 9<sup>th</sup> in the nation in unemployment insurance taxes. We need reforms that will protect the integrity of the unemployment insurance program and reduce needless pressures on job creators.

### **Proposal**

- Amend the Unemployment Insurance Act to provide stronger fraud provisions and penalties.
- Update the financial eligibility trigger which has not been changed for nearly 30 years.
- Strengthen the requalification for regular benefits and benefits for seasonal and temporary workers provisions.
- Redefine disqualifications for misconduct and voluntary quit provisions.

## Lawsuit Reform

### **Background**

Illinois has one of the worst lawsuit climates in the nation, ranking 46<sup>th</sup> out of all 50 states. Illinois has two of the top five counties in America named as “judicial hellholes” by the American Tort Reform Association based on lawsuits filed and size of awards.

Ninety percent of plaintiffs who file in Madison County come from outside Illinois

If we are to grow our economy again, we need commonsense reforms to restore sanity to our courts.

### **Venue Reform**

Currently, lawsuits can be filed in a county even if the plaintiff or defendant doesn't reside in that county. Legislation is needed to make it more difficult for plaintiffs to “venue shop.”

#### *Proposal*

- Can only sue corporations, associations and partnerships where the entity has an office, as opposed to where the entity has an office or does business.
- A lawsuit must be dismissed for lack of venue if there is not a defendant who is an Illinois resident and the transaction or cause of action did not occur in Illinois.
- Deletes the provision that an action against an insurance company may be brought in the county in which a plaintiff resides.

### **Restore Jury Composition**

Senate Bill 3075 was a Trial Lawyers' initiative passed during the 98<sup>th</sup> General Assembly's veto session and signed into law as PA 98-1132. It reduced the number of jurors in all civil cases to 6 from 12. It also increased the pay to all jurors to \$25 for the first day and \$50 per day thereafter. Previous fees ranged from \$4-10 a day.

Funding was not proposed for this bill. This represents up to a 425% increase for some counties.

McHenry estimates that it will have to pay an additional \$368,000 for jury service. Similarly, Lake County estimates that its costs would increase by \$500,000.

#### *Proposal*

This legislation should be repealed before its June 1, 2015 effective date to save taxpayer dollars.

### **Joint and Several Liability Reform**

Current law allows for trial lawyers to target deep-pocketed defendants, even if other defendants bear responsibility. One defendant could be liable for all damages caused by numerous defendants.

#### *Proposal*

- For both joint and several liability cases, adds that any third-party defendants who could have been sued can be jointly or severally liable for the purposes of determining other defendant's liability. This will allow defendants to point to other potentially liable defendants, even if they are not named in the lawsuit, in order to reduce their own liability.
- For those defendants that are more than 25% liable and thus jointly and severally liable, we would allow them to reduce their liability if there were other potential defendants.

### **Truth in Medical Expense Awards**

Currently, Illinois law allows for the introduction of any medical expense *billed* when determining damages. In actuality, while doctors and hospitals may bill large amounts, only a small percentage of those bills are actually *paid* by the patient or health insurance. This results in inflated medical expense verdicts.

#### *Proposal*

The introduction of medical expenses should be limited to only those expenses actually *paid* by the patient.



## **Local Employee Empowerment Zones**

### **Background**

Joining a union should be a choice - workers should be free to join or not join a union as they see fit. States that have embraced employee empowerment and moved away from forced unionization have seen significant economic development. A study by the Fraser Institute examined findings from an econometric model of state gross product and total employment for 49 states from 1977-2010. The study found that employee empowerment laws increase economic output by 1.8 percent and increased employment by 1 percent for the average state.

### **Proposal**

This legislation would authorize “employee empowerment zones” to be established in any county, municipality, school district, or other unit of local government. Within an employee empowerment zone, state law would give workers the right to voluntarily join, or refrain from joining, a union. It would be unlawful to condition employment on the obligation to join a union or pay union-related dues within a zone.

An employee empowerment zone could be established either (i) by ordinance or resolution adopted by the governing board or council of the local government or (ii) by referendum proposed by petitions signed by at least 5 percent of registered voters in the jurisdiction. The proponents would decide whether the employee empowerment zone would apply to public sector employees, private sector employees, or both.

- A county-wide employee empowerment zone would apply to all public- and/or private-sector (as applicable) employees within that county. If the zone applies to public-sector employees, it would apply to public employees of the county and of any other unit of local government, including home rule units, or school district located within that county.
- A municipality-wide employee empowerment zone would apply to all public- and/or private-sector (as applicable) employees within that municipality. If the zone applies to public-sector employees, it would apply to public employees of the municipality and of any other unit of local government, including home-rule units, or school district located entirely within that municipality.
- An employee empowerment zone adopted in any other unit of local government or school district would apply only to public employees of that local government or school district.
- An employee empowerment zone could also be adopted in a Chicago city ward. That zone would apply only to private-sector employees. While the zone’s boundaries would initially be the same as the ward’s boundaries, the zone’s boundaries would not be changed by any redistricting of the ward.



## **Taxpayer Protection and Property Tax Freeze Package**

Illinois homeowners pay the second-highest property taxes in the nation. If we want more homeowners in Illinois, we need to address the root causes of high property taxes – too much bureaucracy and mandates that add costs to our communities:

- Pension payments cost local communities more than \$2 billion in 2013, and local governments don't control benefit or contribution levels;
- In the last decade, Illinois lost \$1.6 billion on school construction projects alone due to costly prevailing wage requirements;
- Project-labor agreements can increase costs on a public works project by nearly 20 percent;
- Nearly half of all states allow for some form of bankruptcy protection for municipalities to help turn around their communities – but Illinois lacks that authorization.

Empowering our communities will allow for better outcomes at the local level that will protect taxpayers. This legislative package:

- Freezes property taxes for two years and lets voters decide via referendum if taxes should be raised;
- Reforms the state's costly prevailing wage requirements and eliminates project-labor agreements that force workers to join a union;
- Gives voters or local government boards the ability to determine if certain topics should be excluded from collective bargaining;
- Allows a municipality to restructure itself through the federal bankruptcy process; and
- Provides more opportunity for minorities to participate in union apprenticeship programs and on public works construction projects.

## Property Tax Freeze

### **Background**

Illinois has the second-highest property taxes in the nation. Instead of government deciding when property taxes should increase, we should empower voters to decide for themselves.

State law created property tax caps for certain counties under PTELL (Property Tax Extension Limitation Law). Under PTELL, a taxing district receives a limited inflationary increase in tax extensions on existing property, plus an additional amount for new construction. Thirty-nine counties, including Cook and the Collar Counties, are subject to PTELL. PTELL limits the growth in extensions to the lesser of 5% or the increase in the Consumer Price Index.

### **Proposal**

- Starting in property tax year 2016, payable in 2017, all property tax extensions from local taxing districts will be equal to the extension from 2015.
- This will impact home rule and non-home rule units of government and both PTELL and non-PTELL counties.
- It will still be possible for a property owner to see fluctuations in property tax bills due to an increase/decrease in value, new construction or the expiration of a tax increment financing district.
- Through a referendum voters may decide to break through the property tax freeze.

## Prevailing Wage / Project Labor Agreements

### **Background**

Illinois sets minimum “prevailing wages” for workers on state and local construction projects. These prevailing wages are significantly more than minimum wages. Over the years, prevailing wages have generally been set to match the union scale, even though a majority of construction workers in Illinois are not part of a union.

In addition, Illinois law permits, but does not require, the use of Project Labor Agreements (PLAs) for construction projects. A PLA is negotiated by the state and unions before the project is awarded to a private contractor. The private contractor is then forced to comply with the terms negotiated by the state and the unions, which increases cost. While not mandatory, the state has been increasingly prone to attach union-only PLAs to construction projects.

Estimates show that mandatory Project Labor Agreements can drive up the cost of a project by roughly 18 percent, with prevailing wage requirements having a similar effect.

### **Proposal**

This legislation would repeal the Illinois Prevailing Wage Law. Projects funded by the federal government would still be subject to federal requirements, including the Davis-Bacon Act. Wages would also still be subject to generally-applicable state laws, such as the Illinois minimum wage. While home-rule local governments would be able to determine local prevailing wages, a local prevailing wage would not apply to a state-funded project (but a federal prevailing wage would continue to apply, if the project is federally funded).

This legislation would also prohibit the use of PLAs for state-funded projects, except when required by federal law.

## **Local Collective Bargaining**

### **Background**

Local units of government are constrained by state law with regard to collective bargaining agreements. This removes taxpayers' ability to control the costs of their local governments, which regularly leads to pressure on local budgets and property taxes. Empowering communities to make local collective bargaining determinations will provide more flexibility to leaders and reduce demands on taxpayers.

### **Proposal**

This legislation would authorize local governments, acting through their governing bodies or by voter-initiated referenda, to exclude certain topics from collective bargaining. These topics include:

- Use of third-party contractors;
- Wages in excess of aggregate limits established by the local government;
- Health insurance benefits;
- Use of employee time for the business of the labor organization;
- Required levels of staffing;
- Procedures and criteria for personnel evaluations and use of seniority; and
- In the case of schools, curriculum or standards of student academic performance, conduct, and discipline in school.

The exclusion of these topics could be adopted for the county, municipality, school district or other unit of local government.

- If adopted county-wide, the exclusion would apply to public employees of the county and of any other unit of local government, including home-rule units, or school district located within that county.
- If adopted municipality-wide, the exclusion would apply to public employees of the municipality and of any other unit of local government, including home-rule units, or school district located entirely within that municipality.
- If adopted in any other unit of local government or school district, the exclusion would apply only to public employees of that local government or school district.

## **Municipal Bankruptcy**

### **Background**

Under federal law, before a municipality can seek relief under Chapter 9 of the Bankruptcy Code, it must be “specifically authorized” under state law to file bankruptcy – 24 states currently provide this authorization. Illinois lacks that authorization, providing no ability to help turn around struggling communities.

### **Proposal**

This legislation explicitly authorizes municipal bankruptcy. There are no requirements, pre-conditions or other limitations to a municipality’s access to Chapter 9 in the proposed legislation. The decision whether to file is left entirely up to a municipality.

## **Apprenticeship Programs / Minority Participation in Construction Projects**

### **Background**

There is a significant imbalance regarding minority participation in union apprenticeship programs. According to the Illinois Department of Labor, 12 percent of apprenticeship participants are Hispanic and 9 percent are African American. However, according to the U.S. Census, 16.5 percent of the state's population is Hispanic or Latino and approximately 15 percent of the population is African American. It's time to restore balance to state-funded construction projects and apprenticeship programs.

### **Proposal**

- This legislation requires agencies letting a state-funded construction contract to provide bidders with county-specific minority participation goals for all personnel on the project as established by the Illinois Department of Labor.
- It also modifies responsible bidder requirements, which require participation in apprenticeship and training programs, to include a good faith effort component for reaching county-specific minority participation goals as established by the Illinois Department of Labor.



## **Transforming Government Package**

The structure of our government has contributed to years of mismanagement of the state's finances. Previous governors negotiated sweetheart deals with those who make money from the government, and then accepted millions in campaign contributions funded by taxpayers. It's a corrupt bargain that rewards insiders at the expense of taxpayers.

It's time we break the cycle of corruption and restore integrity to the process. Structural reforms to our state will ensure that we have a government that earns the respect of the public. This legislative package:

- Enacts 10-year term limits on members of the Illinois General Assembly
- Extends to Illinois state workers the same protections provided to federal workers by prohibiting the collection of fair share dues for those who choose to not join a union
- Closes a loophole that allows unions with state collective bargaining agreements to contribute to those who negotiate their contracts – just like the contribution ban on businesses with state contracts
- Reforms the state's revolving door provisions for senior members of the Administration, and strengthens gift and traveling restrictions
- Merges the offices of the Illinois Comptroller and Treasurer



## **Term Limits Amendment**

### **Background**

Fifteen other states impose term limits on state legislators. Most states impose a limit of eight to 12 years in each chamber. It's time for Illinois to adopt legislative term limits.

### **Proposal**

The Illinois Constitution should be amended to limit a Representative or Senator from holding that office or combination of those offices for more than 10 years.

## “Fair Share”

### **Background**

Ninety-three percent of the state’s workforce is unionized. Even if an employee chooses to leave the union, he or she must still continue to pay “fair share” fees to the union. Government union bargaining and government union political activity are inextricably linked. The federal government and many state governments ban the collection of fair share fees from federal workers. Illinois should do the same.

### **Proposal**

This legislation would ban union agency/fair share fees for state government workers.

## **Removing Conflicts of Interest in Campaign Contributions**

### **Background**

State law already prohibits contractors with more than \$50,000 in state contracts from contributing to the campaign of an officeholder that awards such contracts. However, labor unions with collective bargaining agreements are exempt from this prohibition. This creates a situation where a statewide official can dole out salary and benefit enhancements and be rewarded with campaign contributions.

### **Proposal**

- Prohibit labor organizations from making contributions to the campaigns of officeholders they collectively bargain with throughout the state, including mayors and school boards.

## **Ethics Executive Order Codification**

### **Background**

This legislation would codify Executive Order 15-09 issued by Governor Rauner to tighten ethics requirements and close loopholes for Executive Branch officials.

### **Proposal**

- Expands the types of disclosures required on the Statement of Economic Interest in order to ensure full disclosure of potential conflicts of interest.
- Prohibits any official or employee who files a Statement of Economic Interest (e.g., directors, supervisors, and procurement officers) from (i) negotiating for outside employment with a lobbyist while employed by the state and (ii) receiving compensation for lobbying the state for one year after leaving state employment.
- Closes lobbyist gift ban loopholes pertaining to food, beverage, and travel for Executive Branch employees and officials.

## Comptroller/Treasurer Constitutional Amendment

### **Background**

The offices of the Illinois Comptroller and Treasurer should be combined to better streamline both offices. It is estimated that this will save the state \$12 million annually. Wisconsin, Minnesota and Michigan already have combined offices.

### **Proposal**

- Eliminates the office of the Comptroller and Treasurer and provides for a single Comptroller of the Treasury.
- A Comptroller of the Treasury would be elected at the General Election in 2018.
- Duties of the Comptroller of the Treasury are to maintain the state's central fiscal accounts; order payments into and out of the funds held by that office; and be responsible for the safekeeping, investment and disbursement of monies and securities deposited with the office.



## **Pension Reform Package**

Our top priority for financial reform must be our pension system. That is true regardless of the Supreme Court's decision on SB 1. Even if our pension systems were fully funded, taxpayers would still be on the hook for \$2 billion.

But our pension systems are not fully funded. They are \$111 billion in the hole—the worst pension crisis in America.

As it stands right now, one out of every four dollars taken from taxpayers by the state goes into a system that is giving more than 11,000 government retirees tax-free, six-figure pensions worth as much as, in one case, \$450,000 per year.

Without the reforms, nearly 25 cents of every tax dollar will continue going into a broken pension system instead of into our social services safety net, our schools or back into the pockets of taxpayers and small businesses.

That is unfair and unsustainable – it's time for lasting pension reform.

Government employees deserve fair and competitive benefits, but we cannot continue to raise taxes on all Illinoisans in order to fund the retirement benefits of a small fraction of our residents.

This legislative package:

- Preserves and protects *all* currently earned benefits to date;
- Moves all *future* work into the Tier 2 pension plan;
- Provides an optional buyout option to reform cost-of-living adjustments in return for a 401(k)-style defined contribution plan; and
- Proposes a Constitutional Amendment to remove ambiguity in future reforms.

## Pension Reform

### **Systems Impacted by Pension Reform Plan**

- State Employees' Retirement System (SERS)
- State Universities' Retirement System (SURS)
- Teachers' Retirement System (TRS)
- General Assembly Retirement System (GARS)

### **Benefit Changes**

- Tier 1 members will have their Tier 1 service frozen as of July 1, 2015. Going forward, all service will be in Tier 2.
- Tier 2 Benefits:
  - Normal Retirement: 67 years old with 10 years of service;
  - Annuity based on highest 8 out of last 10 years of service;
  - Annual Final Average Salary may not exceed \$111,600 as automatically increased by the lesser of 3% or one-half of the annual increase in the CPI during the preceding year;
  - COLAs equal to the lesser of 3% or one-half the annual increase in the CPI, not compounded.
- Overtime will not count towards pensionable salary.
- For TRS and SURS, the 6% cap on final average salary spiking will instead be tied to the annual increase in the CPI.

### **Buyout**

- Employees in the state pension systems will be offered the option of a pension "buyout," similar to buyouts offered in the private sector, with a new defined-contribution plan. Under the Governor's proposal, an optional partial pension buyout will be offered to Tier 1 members.
- In exchange for a reduction to the Tier 1 benefit COLA, members would receive a lump sum payment and be enrolled in a defined contribution pension plan (similar to a private 401(k) plan). The lump sum payment will be the starting account balance for the defined contribution plan. Employees and their employers will make contributions to the plan. The defined contribution plan will be on top of the new defined benefit plan.

### **Funding**

- The funding goal will be moved to 100% funded by FY2045 from the current goal of 90% funded by FY2045.
- Contribution increases caused by investment return assumption changes will be smoothed over a 5 year period.

### **Savings, if all 4 systems are reformed as proposed in the budget:**

- FY16 reduction of \$2.2 billion in contribution, lowering the GRF contribution from \$6.6 billion to \$4.4 billion.
- Over \$100 billion in total state contribution savings from FY16 – FY45.
- Immediate unfunded liability reduction of \$25 billion.

## **Pension Constitutional Amendment**

### **Background**

Our state will not be on sound economic footing until Illinois adopts lasting pension reform. Until that occurs, critically important services like education, healthcare and human services will be crowded out by skyrocketing pension payments.

### **Proposal**

The Illinois Constitution details that pension system membership is a contractual right. While it is the position of the Governor's Office that such protection only applies to currently earned benefits, the Illinois Constitution should be amended to explicitly apply only to historically-earned benefits, not to benefits that may be accrued through future work.





## The Turnaround Agenda Messaging Points – First Legislative Session

*Empowering Voters & More Local Control*

- Conflicts of interest have spread throughout Illinois government. Special interest groups have come to control Springfield, running it for their own benefit and pushing many local governments to near bankruptcy.
- Government union leaders are funding politicians who negotiate their pay and benefits; healthcare agencies are funding politicians who structure Medicaid; trial lawyers are funding judges who hear their cases.
- Special interests have taken away power from the voters, forcing unfunded mandates, unaffordable pension regulations and too many layers of government onto taxpayers, and filling the workers compensation system with fraud and abuse.
- Taxes are rising, businesses are leaving and schools are deteriorating.
- We must empower local voters to turn our state around.
- Local voters should be able to vote on and control property tax increases.
- Local voters should decide what issues can be collectively bargained in their county and municipal governments.
- Local voters should decide pension and health benefits for their local governments.
- Local voters should decide what issues should be subject to collective bargaining in their schools and whether teachers should be forced to pay partial or full union dues as a condition of being allowed to teach.
- Local voters should decide whether their businesses should be subject to forced unionism or employee choice.
- Decisions of voters in one county or municipality should not be forced upon voters in other parts of the state. The voters of Illinois should be empowered to control their own destiny on taxes, schools and jobs.
- The state shouldn't impose costly mandates on local governments that drive up costs. Prevailing wage requirements and project labor agreements block true competitive bidding in government construction projects and drive up taxpayer costs 20% or more.
- Voters should be empowered to decide term limits on their elected officials.
- With voter empowerment, Illinois can become a great state, a competitive, compassionate state again.
- These reforms are reasonable, common-sense, and bi-partisan. Many states have implemented variations of them. Twenty-nine states and the federal government do not allow government union collection of "fair share" dues and have put some restrictions on collective bargaining. Even President Franklin Roosevelt supported this.
- The states with dominant government unions (IL, NJ, CT, CA etc.) have the largest chronically unfunded pensions, debt and deficits. Most have installed high income taxes to try to deal with their recurring budget problems; but that has failed to fix their chronic deficits because the structure, the underlying conflict-of-interest in government union power, has not been addressed.



## *The Four-Year Agenda*

### 1. **Economic Growth and Jobs Package**

- Pass a phased-in minimum wage increase of 25 cents every year for seven years.
- Implement true workers' compensation reform legislation that updates how injuries are apportioned to ensure employers pay for injuries that occur on the job; clarifies the definition of "traveling employees" to ensure a reasonable standard that excludes risks that would impact the general public; and implements American Medical Association guidelines when determining impairment.
- Enact lawsuit reforms to prevent unreasonable trial lawyer venue shopping, address unfair joint and several liability requirements and provide a balanced approach to medical malpractice cases to keep doctors in Illinois.
- Pass a constitutional amendment to cap unreasonable judgments (2018 ballot).
- Make Illinois unemployment insurance fair for beneficiaries and employers, including legislation that cracks down on benefit fraud for those who voluntarily leave employment but receive benefits and provides a more fair definition of misconduct in the workplace.
- Implement true competitive bidding in public works projects, limit prevailing wage requirements and eliminate project-labor agreements.
- Restructure the motor fuel tax to appropriately invest in infrastructure.
- Create local employee empowerment zones. Let voters in a county, municipality or other local unit of government decide via referendum whether or not business employees should be forced to join a union or pay dues as a condition of employment.
- Create a Minority Enterprise Small Business Investment Program to assist minority entrepreneurs in startups throughout Illinois.
- Require unions that contract with the state to have their apprenticeship programs reflect the demographics of Illinois communities, and to have their membership on public construction projects reflect the diversity in the surrounding area.

### 2. **Student and Career Success Package**

- Increase state support for pre-K-12 education, especially for low-income families.
- Expand access to high-quality early childhood education and make programs easier to navigate for families.
- Consolidate and refocus all state boards, agencies and programs to manage an integrated comprehensive cradle-to-career statewide system of education and vocational training.
- Launch an effort to increase parent participation in the classroom.
- Initiate statewide task force to analyze the challenges of teenage pregnancy and loss of two-parent families.
- Give local school boards the ability to modify overly burdensome unfunded mandates.
- Lift the arbitrary cap on public charter schools, reduce funding disparities for public charters and provide more high-quality educational options to students through tax credit scholarships.
- Reform teacher tenure and incentivize local school districts to reward high-performing administrators and educators.
- Improve teacher recruitment, ensure a diverse educator base and streamline licensure requirements to bring the best and brightest teachers to Illinois.
- Eliminate unnecessary testing and institute a rigorous K-12 student growth measure, using ACT and other national metrics.
- Expand vocational and technical program resources and grow partnerships among employers, high schools and community colleges.



### **3. Taxpayer Empowerment and Government Reform Package**

- Make income taxes low and competitive with other states.
- Freeze property taxes by amending Illinois' Property Tax Extension Limitation Law. The total property tax extension could not increase above the 2015 levy year, except for new construction or property in a TIF district. Voters would still be allowed to override the freeze via referendum.
- Modernize the sales tax to include service taxes that keep us competitive with neighboring states.
- Preserve a fair and flat income tax by protecting low-income families with an increase in the Earned Income Tax Credit, and provide additional exemption relief to working families.
- Launch a government consolidation and unfunded mandate taskforce chaired by Lt. Governor Sanguinetti to reduce the number of Illinois' 7,000 units of government and provide more flexibility to local communities.
- Extend to municipalities bankruptcy protections to help turn around struggling communities.
- Pass a constitutional amendment implementing 8-year term limits for statewide elected officials and members of the General Assembly.
- Protect historically accrued state pension benefits for retirees and current workers, while moving all current workers into the Tier 2 pension plan and/or a 401(k) for their future work. Police and firefighters should receive separate special consideration.
- Pursue permanent pension relief through a constitutional amendment.
- Codify Executive Order 15-09 prohibiting the revolving door from state government to lobbying and extend revolving door restrictions to the General Assembly.
- Empower government employees to decide for themselves whether or not to join a union.
- Empower local voters to control collective bargaining issues in their local governments and take more direct responsibility for their employees' benefits.
- Extend the prohibition on political contributions for businesses with state contracts to all organizations with a state collective bargaining agreement and organizations funded by entities receiving state Medicaid funds.
- Prohibit trial lawyer donations to elected judges to address conflicts of interest in the courts.
- Pass a constitutional amendment to create merit-based judicial selection as supported by the American Bar Association (2018 ballot).
- Reward state workers with performance pay and incentivize employee-inspired cost-saving measures.
- Pass a constitutional amendment merging the offices of Comptroller and Treasurer and return \$12 million in annual savings to taxpayers.
- Require more vigorous enforcement of minority contracting guidelines and hiring in state government.
- Pass a binding Balanced Budget Amendment to the Illinois Constitution that prohibits the carry-over of past-due bills (2018 ballot).
- Reform the criminal code to ensure sentences are commensurate with the severity of the crime, and reduce penalties for non-violent offenses.
- Launch a bipartisan Criminal Justice Reform Commission with a goal to improve public safety and reduce prison population by 25 percent in 10 years.
- Provide additional investment in community-based reentry and diversion programs for persons reentering the community.
- Increase correctional officer staffing to improve officer and inmate safety.

## **WSJ: Rauner's Illinois Revival Project** *The new Governor targets the corrupt union-political bargain.*

Bruce Rauner has the biggest reclamation project in American politics, and this year it's the state drama to watch. The first Illinois GOP Governor in 12 years is off to a strong start by targeting the source of the state's fiscal and economic rot: the corrupt political bargain between state lawmakers and public unions.

On Monday Mr. Rauner signed an executive order ending mandatory union fees for state workers who don't want to join a union or support its agenda. He declared that Illinois's contracts with public unions, including the American Federation of State, County and Municipal Employees (Afcme), violate the First Amendment by forcing workers to associate with the union against their will.

The same logic guided the U.S. Supreme Court's 2014 decision in *Harris v. Quinn* that a mother who accepted a state subsidy for providing home care to her disabled child could not be forced to join a union. In *Harris* the Justices stopped short of ruling on what Justice Samuel Alito called the "full-fledged" public employees who are forced to pay dues under the Supreme Court's decision in 1977's *Abood v. Detroit Board of Education*.

But the Justices cast doubt on the precedent, noting its "questionable foundation." Compulsory union fees are especially problematic, the Court wrote, because "in the public sector, both collective-bargaining and political advocacy and lobbying are directed at the government."

Now Mr. Rauner's team plans to take that logic to federal court in a lawsuit against Afcme and other government unions seeking to overturn *Abood*. The First Amendment protects the freedom of speech and association, so Mr. Rauner will argue that a public worker who opts out of a union can't be forced to financially support the union.

The government unions that have dominated Illinois politics for decades aren't amused. Afcme Council 31 executive director Roberta Lynch called the order an illegal "scheme to strip the rights of state workers and weaken their unions." Chicago Teachers Union President Karen Lewis called Mr. Rauner "Scott Walker on steroids."

Mr. Rauner will need to be as tough as Mr. Walker because Illinois faces a ballooning fiscal mess. The Governor's budget office estimates the state had a \$5.8 billion backlog of unpaid bills at the end of 2014, and the current fiscal year could add another \$1 billion to the operating deficit.

Mr. Rauner is making his pitch around the state with slides that show the Land of Lincoln is the Midwest's economic laggard. According to the Bureau of Labor Statistics, from 2003 to 2014 Illinois had 0.2% employment growth, compared to 3.8% in Indiana, 8% in Iowa and 7.3% nationwide. Net Illinois job growth was 10,300 compared to 109,000 in Indiana and 115,900 in Iowa. Chief Executive magazine ranks Illinois the 48th for doing business, the Small Business and Entrepreneurship Council ranks it 35th, and the Tax Foundation puts its business tax climate at 31st.

Central to the mess is the rising bill for state pensions and salaries, and the constant union demands for higher taxes to pay for them. Compensation costs for state employees make up about one third of the state budget, with an astonishing 25% of current state tax dollars going to fund retiree benefits and an \$111 billion unfunded pension liability.

Mr. Rauner campaigned on a plan to reform pensions by keeping current retirees in the old system while moving current workers into a 401(k)-type model. In a memo to lawmakers last week, the Governor suggested the state could consider something like the federal model, which switched in the 1980s from a defined-benefit plan to a 401(k) and Social Security model without a defined benefit.

The current system is unsustainable, but so far it has been unreformable thanks to the ties between legislators and public unions. According to the Illinois Policy Institute based on data from the state Board of Elections, between 2002 and 2014 86% of state lawmakers received campaign cash from government unions. House Speaker Michael Madigan received more than \$1 million.

Reducing this union stranglehold on policy is essential to turning the state around, and Mr. Rauner is thinking creatively. The Democrats who have a supermajority in the state legislature won't make Illinois a right-to-work state. But Mr. Rauner is trying a work-around by encouraging areas in the state known as "home rule" communities (so-called because they are allowed to opt out of certain state regulations) to become right-to-work zones.

That idea will have particular appeal for downstate manufacturing towns and those along the border that have been losing to neighboring Iowa and Indiana, both right-to-work states. Afcme's state contract expires on June 30, and the renegotiation will be another chance for reform.

The sages of Springfield are saying that Mr. Rauner can't win and so would be smarter to go along with a tax increase in return for small pensions reforms. But that won't solve the state's problems and would mark the Governor instantly as a lame duck. Mr. Rauner carried 20 state House and 10 Senate districts that are represented by Democrats. If he can break the union monopoly on Springfield, his Illinois revival has a chance.

## Gov. Bruce Rauner is out to emancipate Illinois

By: *George Will*

The most portentous election of 2014, which gave the worst-governed state its first Republican governor in 12 years, has initiated this century's most intriguing political experiment. Illinois has favored Democratic presidential candidates by an average of 16 points in the past six elections. But by electing businessman Bruce Rauner, it initiated a process that might dismantle a form of governance that afflicts many states and municipalities.

Rauner, 58, won his first elective office by promising to change Illinois's political culture of one-party rule by entrenched politicians subservient to public-sector unions. This culture's consequences include:

After more than a dozen credit-rating downgrades in five years, Illinois has the lowest rating among the states. Unfunded public employees' pension liabilities are estimated, perhaps conservatively, at \$111 billion, the nation's largest such deficit as a percentage of state revenue. Currently, public pensions consume nearly 25 percent of general state revenues. Debt per resident is about \$24,989, compared with \$7,094 in neighboring Indiana.

Four of the previous nine governors went to prison, so, Rauner says, "people know we've had bad people in charge." Bad but routine practices are astonishing. Some legislators practice law, specializing in real estate tax appeals: They are paid a portion of what they save clients by reducing the clients' bills under the laws the legislators have written.

Rauner says previous governors from both parties have been complicit in the unionization of about 93 percent of government employees.

Unionization began during the 14 years (1977-1991) of Republican Gov. Jim Thompson. Gov. Rod Blagojevich (D), now an inmate, instituted "card-check" unionization. Rauner says union organizers would tell individuals: Sign the card or else — we know where your wife works and your children go to school.

Rauner is a tall, confident, relaxed man with a powerful voice and a plan to break "a totally rigged system." The plan includes structural reforms necessary to enable lasting policy reforms.

By executive order, Rauner has stopped the government from collecting "fair share" fees for unions from state employees who reject joining a union. This, he says, violates First Amendment principles by compelling people to subsidize speech with which they disagree.

The unions might regret challenging this in federal court: If the case reaches the Supreme Court and it overturns the 1977 decision that upheld "fair shares," this would end the practice nationwide.

Rauner hopes to ban, as some states do, public employees unions from making political contributions, whereby they elect the employers with whom they negotiate their compensation. Rauner also hopes to enable counties and local jurisdictions to adopt right-to-work laws, thereby attracting businesses that will locate only where there are such laws.

He hopes the legislature will empower voters to ratify changes to the state constitutional provision that says public pensions can never be "diminished or impaired." He also proposes shifting state employees from unaffordable defined-benefit plans to a more affordable plan for the state. Furthermore, he hopes to end practices that now have more than 11,000 retirees receiving six-figure pensions.

Another 2016 referendum would impose term limits on state legislators, ending the careerism on which the corrupt system depends. This would rile Democrat Michael Madigan, who was elected to the legislature in 1970 and has been speaker of the House for all but two years since 1983. But Madigan might want the state's crisis tamed in case his daughter Lisa, currently Illinois's attorney general, chooses to run for governor.

Democrats have veto-proof majorities in both houses of the legislature, and redistricting has entrenched incumbents. Democrats do, however, fear being challenged in primaries by unions punishing anyone disobedient. A question is whether reform-minded Democratic donors might protect Democrats.

By allowing a temporary tax increase to actually be temporary — to lapse — Rauner increased his leverage with the legislature, which lusts for revenue not swallowed by pensions.

An Illinois governor (Adlai Stevenson) once said, "Cleanliness is next to godliness, except in the Illinois legislature, where it is next to impossible."

If Rauner emancipates Illinois from government organized through its employees unions as an interest group that lobbies itself for perpetual growth, so can other states. And the nation.

## *The Labor-Electoral Complex*

Excerpts from Michael Bloomberg's Final Major Address as New York City Mayor

December 18, 2013

... Our children's future should never be sacrificed for our own benefit. That's a simple idea – but in politics, it's an awfully tough sell. People want benefits from their government – and they want them now...

That's natural – and it's the government's job to deliver them, and to find innovative new ways to tackle the toughest problems and improve life for people today. But at the same time, it's also government's job to improve life for people tomorrow – including for the children who are too young to vote and the children who have yet to be born.

Those of us in government work for them, too – and it's our job to think about their needs 20, 30, 40 and even 100 years from now. That involves looking ahead, identifying barriers to progress, and taking action...

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...[O]ur country appears to be in the early stages of a growing fiscal crisis that – if nothing is done – will extract a terrible toll on the next generation. Here in New York City, over the past 12 years our pension costs have gone from \$1.5 billion to \$8.2 billion. That's almost a 500 percent increase – when inflation totaled only 35 percent.

The seven billion dollars additional that taxpayers are forced to spend on pensions every year is seven billion dollars more that cannot be invested in our schools and our parks and our social safety net, or our mass transit system, or our climate resiliency work, or our affordable housing efforts, or our tax-relief for working families.

For many years, we have tried to convince public sector labor leaders to modernize our pension and health care systems to bring down costs, and I will say we have had very little success.

In fact, the labor leaders have sued the City to stop us from putting out just a solicitation to redesign health benefits, which would dramatically reduce costs and improve care for our employees and their families...

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... [W]e supported Governor's Cuomo push to create a new tier for new employees, which will produce some savings. But that only slows future growth.

Keep in mind: Pensions and health care costs have become a major percentage of the overall compensation we provide to our workforce. In fact, the pension and health care benefits we pay for uniformed workers amount to more than 100 percent of their salaries, and they are a very large percentage of salaries for our overall workforce...

...[R]ight now, right now, we offer benefits that are over and above what the market offers, and what other governments offer. And those costs continue to grow, and as they do it limits our ability to increase base salaries.

For example: The private market has basically stopped offering defined benefit pensions – and yet in New York City, labor leaders have opposed any effort to give their members even the choice of a defined contribution plan.

Employees who work for the City University of New York have that choice – and incidentally three-quarters of them choose the defined-contribution plan because it is more flexible and portable. Why shouldn't New York City employees have the same choice?

It's the kind of questions that more and more mayors and governors – in both political parties – are asking across the country, which is the first real sign of a crack in the labor-electoral complex that has traditionally stymied reform. And they are asking that out of sheer necessity.

Since 2010, 38 local governments have filed for bankruptcy, largely because of out-of-control pension costs. And more are now flirting with it. But even if struggling cities escape bankruptcy, the funds that must be diverted to cover skyrocketing pension bills are funds that cannot be invested in the future, which can set off a downward spiral that, as New York found out in the '70s, is deeply painful and takes decades to recover from.

As a country, we must confront this crisis before that happens. It is one of the biggest threats facing cities – because it is forcing government into a fiscal straight jacket that severely limits its ability to provide an effective social safety net and to invest in the next generation.

The costs of today's benefits cannot be sustained for another generation – not without inflicting real harm on our citizens, on our children and our grandchildren.

Now, labor leaders are understandably determined to protect their members. That's their job, and we understand that. They've done it exceptionally well. But it's also the job of those in government and the public at large to protect our children, to protect the social safety net, and to protect future generations.

That's a fundamental principle of progressive politics, and we cannot afford to adhere to that principle on every issue except labor contracts. I think it's no secret that elected officials have a tendency to make decisions based on short-term political rewards, rather than long-term economic gains.

And let's face it: The future that most elected officials worry most about is their own. Winning election – or reelection – is the goal around which everything else revolves. But we cannot afford for our elected officials to put their own futures ahead of the next generation's, and to continue perpetuating a labor-electoral complex that is undermining our collective future.

We need them to look ahead and to address the needs of tomorrow instead of being prisoners to the labor contracts of yesterday.

## **WSJ: The 'Labor-Electoral Complex'** *Bloomberg coins a phrase that deserves national currency*

New York Mayor Mike Bloomberg is on a valedictory tour as he prepares to leave office at the end of the month, and it's too bad he saved his best speech for last. The mayor isn't known as a phrase-maker, but after 12 years in the job he coined a term this week that deserves national currency—the "labor-electoral complex."

That's how he described the public union political machine that has ruined so many American cities. "We cannot afford for our elected officials to put their own futures ahead of the next generation's, and to continue perpetuating a labor-electoral complex that is undermining our collective future," the mayor told the New York Economic Club. Cities are dynamic and attractive places to live, but their future is jeopardized by "the explosion in the cost of pension and health-care benefits for municipal workers."

He knows this from hard experience. When he took office in 2001, New York City spent \$1.5 billion a year on pensions. Now it spends \$8.2 billion, nearly a 500% increase when inflation rose by only 35%. Add health-care costs, and benefit payments are swallowing an ever larger share of the city budget. That means there is less money for current services like education or public works.

Everybody knows this has to change, but Mr. Bloomberg nailed the main obstacle to reform with his reference to the "labor-electoral complex." This is the cozy relationship between public unions and politicians that dominates modern urban government. It is the new Tammany Hall.

Union cash helps elect politicians who then reward the unions with higher pay and benefits. The cycle repeats until taxes become destructive and spending is unaffordable. Exhibit A is Detroit. But some 38 local governments have filed for bankruptcy since 2010, "largely because of out-of-control pension costs," Mr. Bloomberg said.

New York City has escaped this political fate for 20 years, thanks to unusual circumstances. First Rudy Giuliani won amid a crisis of public order, and Mr. Bloomberg is rich enough to have won without needing union cash.

But the unions are getting revenge now having backed superliberal mayor-elect Bill de Blasio . He has endorsed the entire public union wish list, including backpay and undermining charter schools. He's struggling to find a schools chancellor because everyone knows Randi Weingarten of the American Federation of Teachers will really run the show.

Many in Mr. Bloomberg's audience this week wondered why the mayor didn't challenge this labor complex while he had the chance. His response is that he offered raises in return for pension reform three years ago, but the unions refused and figured they could wait him out. But that doesn't mean Mr. Bloomberg couldn't have done more in his early years in office, especially amid the recession and fiscal crisis after 9/11.

Mr. Bloomberg nonetheless claims that the many expired union contracts mean that he is leaving behind "political leverage. The next administration will have a once in a generation opportunity for comprehensive benefit reform." That's a direct challenge to Mr. de Blasio. We will see if he is a larger public figure than the labor-electoral complex that made him mayor.



# Federal Government Labor Policy

*Supported and Enacted by Democrats*

Excerpt from letter by President Franklin Delano Roosevelt:

*“All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with Government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress.”*

## Federal Service Labor – Management Relations

- The federal government prohibited the forced collection of union dues (“Fair Share”) in 1978 as part of the Civil Service Reform Act signed by President Jimmy Carter. That law passed the Democratic-controlled U.S. Senate 87-1 and the Democrat-controlled U.S. House of Representatives 365-8
- Employees have the right to organize and collectively bargain over work conditions including work hours, grievance procedures, work assignments
- Prohibited from strikes, work stoppages, slowdowns, picketing, etc.
- Cannot bargain over wages, benefits, pensions, personnel decisions and managerial rights (prohibits bargaining on mission, budget, organization, number of employees or internal security)
- No automatic mandatory arbitration provision or injunctions in aid of arbitration for collective bargaining impasse
- Prior to 1983, pension was defined benefit plan with no Social Security. Since then, a hybrid system including a defined benefit annuity, Social Security and a 401(k)



## OFFICE OF THE GOVERNOR

207 STATE HOUSE  
SPRINGFIELD, ILLINOIS 62706

**BRUCE RAUNER**  
GOVERNOR

**From:** Jason Barclay, General Counsel to the Governor □

**Re:** Permissibility of Employee Empowerment Zones Under Federal Law

**Date:** March 23, 2015

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Governor Bruce Rauner has proposed giving voters the ability to declare their county, city, school district, or other unit of local government to be an “employee empowerment zone,” where workers would have the right under state law to choose whether or not to join a union.

Admittedly, *current* Illinois law does not allow voters to create employee empowerment zones. That is why Governor Rauner supports a *legislative* solution. Consistent with what federal law permits the States to do in this area, the proposal would authorize local governments to decide whether to give workers in a given locale the right to choose whether to join a union. Federal law authorizes Governor Rauner’s proposed legislative solution.

In response to a question from two members of the General Assembly about *current* Illinois law, Attorney General Lisa Madigan recently opined that in the absence of enabling legislation, local governments are powerless to enact employee empowerment zones by local ordinance (the “AG Opinion”).<sup>1</sup> Governor Rauner does not dispute this portion of the AG Opinion. That is because he does not seek to enact empowerment zones only by local ordinance. Rather, he proposes to *change* current Illinois state law.

Where the Governor respectfully disagrees with the Attorney General is that portion of the AG Opinion that suggests that federal law might somehow prohibit voters from approving employee empowerment zones even if state law allows such zones. No court in the country, that we can find, has issued such a ruling. The Attorney General reads the relevant federal law as an all-or- nothing proposition. Either the entire State must allow workers to decline to join a union or no part of the State can so allow.

<sup>1</sup> Ill. Att’y Gen. Op. 15-001 (Mar. 20, 2015).

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**Permissibility of Employee Empowerment Zones Under Federal Law**

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On that point, there is wide support for the Governor’s position that the National Labor Relations Act (the “Labor

Act”) cannot and should not be read too expansively. Under federal law, States may enact laws, like the one the Governor proposes, to protect employees’ rights and to allow local voters to create employee empowerment zones. No law says empowerment zones must either be coextensive with state boundaries or exist not at all. We respect the right of the Attorney General to issue an advisory opinion on this topic, but the General Assembly should be aware that this issue has never been resolved by federal courts and there is considerable support for the Governor’s legal position. The AG Opinion should, therefore, not be a basis for wholly rejecting the Governor’s proposal.

Federal law requires workers’ rights to be grounded in state law, as the Governor has proposed, but federal law does not require those rights to be implemented statewide. Consistent with the wisdom behind our federal design, States are within their authority to determine—by state legislation—how best to draw employee empowerment zones.

### **The National Labor Relations Act**

The Labor Act permits, but does not require, the use of union security agreements.<sup>2</sup> Those are the agreements between an employer and a union that require employees to become members of the union and pay union dues as a condition of employment.

Congress amended the Act in 1947 to permit States to prohibit the use of union security agreements. Specifically, federal law now provides, “Nothing in [the Labor Act] shall be construed as authorizing . . . application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.”<sup>3</sup> That amendment gave States the power to ensure that union membership was not a condition to employment. So, for the past 67 years, States have been free to enact laws to ban union security agreements.

To date, 25 States and one territory, commonly referred to as “right-to-work States,” have enacted laws to prohibit “union security agreements.” The outright ban on union security agreements, which goes much farther than Governor’s Rauner’s proposal, comports with federal law.

### **The Governor’s Proposal**

Governor Rauner’s proposal would prohibit the practice of conditioning employment on union membership in employee empowerment zones. To emphasize, the Governor’s proposal calls for *state legislation*. Under the proposal, the state would authorize voters of any unit of local government or school district to decide by referendum whether that prohibition should apply in their respective unit of local government or school district. Voters could also decide whether the state law would apply to private sector employees, public sector employees, or both.

<sup>2</sup> 29 U.S.C. § 158(a)(3). <sup>3</sup> 29 U.S.C. § 164(b).

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### **Permissibility of Employee Empowerment Zones Under Federal Law**

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If the voters of a particular jurisdiction elected to apply these employee protections—thus establishing an “employee empowerment zone”—the protections would be grounded in state law, not local law. The proposed state law itself would apply uniformly in every unit of local government in Illinois. Differences, if any, would result only because some jurisdictions would apply, and some would decline to apply, the protections available under state law.

### **The Governor’s Proposal Is Permitted by Federal Law**

Governor Rauner’s proposal is entirely consistent with the federal Labor Act.

First, as the Labor Act requires, the Governor has proposed “State . . . law” prohibiting union security agreements in Illinois. All agree that the meaning of any federal law begins with the text of that law, and ends there if the text is unambiguous. Here, there is no ambiguity in the Labor Act. It applies to *all* “State . . . law[s]” prohibiting union security agreements. It does not differentiate between state law that prohibits union security agreements in every part of the State and state law that prohibits such agreements in only some parts of the State. It does not differentiate between state law that applies to all employees in all industries and state law that applies only to some. To interpret the Labor Act as permitting only those state laws that prohibit union security agreements throughout an entire State—applied to all industries, all employees, no exception—would require reading additional words and limitations into the Labor Act. That is not allowed, especially when, as here, the Labor Act’s text is plainly unambiguous.

Therefore, the Governor’s proposal would be permitted by the Labor Act’s unambiguous language, just like the laws of 25 other States that prohibit union security agreements.

Second, even if the Labor Act’s phrase “State law” were ambiguous on the types of state laws within its scope (and it is not), the ambiguity would be resolved in favor of Governor Rauner’s proposal, because the proposal is consistent with Congress’s intent. In amending the Labor Act to permit states to prohibit union security agreements, Congress sought to enable States to craft State-specific laws, which necessarily would vary by State. “[That amendment to the Labor Act] can best be described as an exemption to the general rule that the federal government has preempted the field of labor relations regulation. It makes clear and unambiguous the purpose of Congress *not* to preempt the field in this regard so as to deprive the states of their powers to prevent compulsory unionism.”<sup>4</sup>

Not surprisingly, other States have successfully enacted laws under the Labor Act that are not uniform in their application to different employees through any given State. For example, the Michigan right-to-work law passed in 2012 exempts police officers and firefighters from its provisions.<sup>5</sup> The Mississippi law exempts railroad employees.<sup>6</sup> Georgia, which prohibits most public sector employees from collectively bargaining but permits collective bargaining by

<sup>4</sup> *Laborers’ Intern. Union of N. America, Local No. 107 v. Kunco, Inc.*, 472 F.2d 456, 458 (8th Cir. 1973) (citing *Retail Clerks Int’l v. Schermerhorn*, 375 U.S. 96, 99-102 (1963)) (emphasis added, internal citations omitted).

<sup>5</sup> Mich. Public Act No. 349 (2012). <sup>6</sup> MISS. CODE § 71-1-47.

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## **Permissibility of Employee Empowerment Zones Under Federal Law**

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firefighters, exempts firefighters and railroad employees from its right-to-work law.<sup>7</sup> These variances in state laws enacted pursuant to the Labor Act are just as Congress intended.

Lastly, the Labor Act could hardly be construed to rule out the Governor’s proposal. Specifically, to construe the Labor Act as applying only to state laws that are sweeping in nature—permitting no variation by geography, industry, or type of employee—would raise serious constitutional questions. After all, in our constitutional design, the States and the people are sovereign, as the Tenth Amendment to the United States Constitution makes explicit. “While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to

govern according to Congress' instructions.”<sup>8</sup> Thus, in many other contexts—municipal bankruptcy, for example—Congress authorizes state legislation but does not dictate how the States are to structure that legislation. Serious constitutional issues would have to be resolved if the Labor Act demanded that States legislate sweepingly, foreclosing the kind of novel approach to local control that the Governor has proposed: voters in each unit of local government could decide for themselves whether to opt in to the proposed state law, and whether the law should apply to public sector employees, private sector employees, or both. Under a well-accepted principle of statutory interpretation,<sup>9</sup> even if it were ambiguous, the Labor Act would be construed in favor of Governor Rauner's proposal. Otherwise, the Labor Act may itself be unconstitutional—a result we should not and cannot presume.

Simply put, nothing in the plain language of the Labor Act requires a State to apply its right-to-work law “statewide.” And even if the Labor Act were ambiguous on that score (it is not), legislative intent and constitutional principles of state sovereignty would require that any ambiguity be resolved in favor of Governor Rauner's proposal.

### **Attorney General Madigan's Opinion**

Placed against the above backdrop, the AG Opinion addresses a wholly unrelated question— whether local employee empowerment zones can be established in the absence of any enabling state legislation. That was the question posed to the Attorney General by two members of the General Assembly. That is the question she answers in the negative. She argues that the Labor Act—which authorizes States to prohibit the use of union security agreements—applies only pursuant to “State or Territory law,” which does not include a local ordinance or referendum.

Contrary to Attorney General's thorough analysis of why local governments cannot create local empowerment zones by ordinance without enabling state legislation, the Attorney General does not grapple with the text or legislative intent of the Labor Act when she suggests that it requires sweeping legislation, permitting no local variation. Nor does she address serious constitutional problems that her suggested interpretation of the Labor Act would create. Instead, she relies on language from cases that dealt with local, not state, laws.

<sup>7</sup> O.G.C. § 34-6-20(2).<sup>8</sup> *New York v. United States*, 505 U.S. 144, 162 (1992).<sup>9</sup> *See, e.g.,* The Attorney General's Brief for Appellants in *In Re Pension Reform Litigation*, at 42 (Jan. 12, 2015).

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### **Permissibility of Employee Empowerment Zones Under Federal Law**

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Therefore, the AG Opinion addresses a question unrelated to the Governor's proposal. The AG Opinion's scope should be so limited. In other words, the AG Opinion should not be permitted to foreclose all discussion about the Governor's proposal.

### **Conclusion**

In sum, Governor Rauner's proposal to enact a state law that prohibits conditioning employment on union membership, and to empower voters to decide whether to apply those protections to their respective units of local government and school districts, is specifically permitted by federal law. The AG Opinion does not address that question. To the extent that the Attorney General asserts that any protections proposed by the Governor must apply statewide, we believe that interpretation is not supported by the text of the Labor Act, its legislative history, or those federal courts that have addressed the limitations imposed by the Tenth Amendment on Congress when enacting federal laws that limit the parameters of state legislation on areas governed predominantly by state law, such as labor relations.

## **The Turnaround Agenda – Local Government Empowerment and Reform**

WHEREAS, Illinois state law creates a "one size fits all" approach to collective bargaining for local units of governments. This approach creates added costs which are ultimately passed on to taxpayers.

WHEREAS, Voters and local officials should determine what is a subject of bargaining - not the State.

WHEREAS, Local control of bargaining would allow voters or local governments to determine if certain topics should be excluded from collective bargaining, including contracting, wages, provisions of health insurance, use of employee time, required levels of staffing, procedures and criteria for personnel evaluations, academic performance, conduct, and discipline in school.

WHEREAS, State law sets thresholds for workers on state and local construction projects increasing costs significantly.

WHEREAS, State law has increased utilization of Project Labor Agreements for construction projects.

WHEREAS, Repealing the Illinois Prevailing Wage Law and the requirements for Project Labor Agreements would allow local governments more control over construction and project costs.

WHEREAS, More than 280 unfunded mandates have been imposed in recent years on communities across Illinois, costing those communities billions. Rolling back mandates will create more flexibility in local government budgets.

WHEREAS, Illinois' workers' compensation costs are the seventh highest in the nation – and more than double the costs in Indiana.

WHEREAS, Updating how injuries are apportioned to ensure employers pay for injuries that occur on the job, a clarification regarding the definition of "traveling employees" to ensure a reasonable standard that excludes risks that would impact the general public, and implementation of American Medical Association guidelines when determining impairment would result in major cost savings for local governments.

WHEREAS, Voters in our community should be allowed to decide via referendum whether or not employees should be forced to join a union or pay dues as a condition of employment.

WHEREAS, Local empowerment zones will help attract jobs and make our community more attractive for businesses.

WHEREAS, Local governments face unfunded liabilities that threaten core services and functions of government; state action on pension reform for future work should provide local governments the ability to address pension reform for future work as well.

THEREFORE, BE IT RESOLVED, \_\_\_\_\_ endorses major reforms in state government that will encourage local control, reduce costs on local governments, empower local voters, and increase competitiveness in our community.