



The Illegality of Municipal Union Donations



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Many pundits have come to the conclusion that one of the prime factors that has led to bloated government on the local, state, and national levels is the disproportionate influence that municipal unions have on the political process.

In this paper, we raise the question as to how it can be deemed constitutional to allow elected officials who act as managers in the collective bargaining process with unions to receive political payoffs from those very same unions against whom they are negotiating.

It appears to be a blatant conflict of interest. It is so forbidden in the private sector that if a management official were to take money from a union rep during the course of their negotiations they would be led off in handcuffs and indicted. Yet, in the public sector, this type of conflict of interest is not only considered legal, but is accepted as the norm.

In a perfect world, we would hope that legislators would pass laws to prohibit these conflicts. However, we understand that it is against the self interest of these incumbent legislators to do so. Consequently, the only remaining recourse for the beleaguered taxpayer may be to seek a decision by a court that would declare this conflict unconstitutional.

Are Municipal Union Conflicts Unconstitutional?

In 2024, our center met with author and constitutional attorney, Philip Howard, to “discuss his theory that the incredible power of municipal unions has so distorted the democratic process that it violates the Guarantee Clause of the United States Constitution.

Howard stresses that the clause places the duty of managing the public’s affairs strictly in the hands of elected officials who are accountable to the public. When those duties and responsibilities of management are punted to unelected and unaccountable entities, such as a public employee union, the Guarantee Clause has been violated.

Our center has added that constitutional questions are also at play from a due process and equal protection perspective. Average taxpayers are denied equal protection when the elected officials representing them have been compromised at the bargaining table by having accepted monetary contributions from the very unions against whom they are negotiating on behalf of the taxpayers.

As to Howard's Guarantee Clause argument, he lays out specifics in his 2023 book *Not Accountable*. In a recent interview with the *Washington Examiner*, Howard lays out some of those examples.

- In 23 Baltimore schools last year, not one student was proficient in math. In Chicago, 37 schools had no students proficient in either math or reading. Faced with this perfect record of failure, a sensible mayor or school board would change personnel, change almost anything. Because of union controls, however, mayors and other elected officials across America are largely powerless to change school personnel or make other vital decisions on how schools work.
- There had been 2,600 complaints of inappropriate police behavior by Minneapolis police. Only 12 resulted in disciplinary action, of which the harshest was a 40-hour suspension. The inability to terminate rogue officers is a prime reason for the breakdown of trust in minority communities.
- Union controls...have eliminated the two main tools of management: decisions on individual accountability and on resource allocation. Accountability is critical not mainly to cull poor performers but to instill the mutual trust needed for an energetic organization. There's hardly anything more dispiriting than the knowledge that performance doesn't matter. Allocating resources is critical to avoid the waste of people standing around or pushing paper.
- An 18-year study in Illinois found that an average of two out of 95,000 teachers were dismissed for poor performance. That's actually twice the rate as in California.

- In Seattle, teacher absences constituted 9% of all school days, requiring substitute teachers who are notoriously less effective. Principals are not allowed to observe teacher performance except with advance notice and under restrictions.
- Unions accumulate billions from public employees and redirect those funds to get leaders elected, who then repay the favor out of taxpayer dollars. The state of Illinois is practically insolvent, with public debt that experts say can never be repaid. Yet this summer, Gov. J.B. Pritzker (D-IL) agreed to a 19.28% raise for 35,000 public workers and a \$1,200 “stipend” to each worker upon ratification. There’s nothing subtle here: quid pro quo.
- Almost 40% of America’s GDP, or \$9 trillion, is spent by the government. Leaving aside \$4 trillion in transfer payments and interest, much of the rest is spent on the salaries and pensions of teachers, police, inspectors, and other public employees (\$2.5 trillion); in public contracts to build roads, military arms, and computer systems; and in providing social services such as dealing with the homeless.
- For police, the procedural tripwires typically include an inability to interview the officer until he’s seen everyone else’s statements (so he can align his story); layers of review and hearings, followed by an appeal to union-approved arbitrators; an inability to refer to similar past misconduct unless it was recent; and secrecy of proceedings so that there’s no transparency to the public. Where discipline is imposed, it is typically overturned by arbitrators, in one report about San Antonio, 70% of the time.
- Under the National Treasury Employees Union agreement, a supervisor must consider 11 factors before taking any disciplinary action, including the “consistency of the penalty with those imposed upon other employees,” “the clarity with which the employee was on notice,” and “mitigating circumstances ... such as ... personality problems.
- The growth of big government, now an eighth of the national workforce, allowed public unions to amass giant political war chests to support favored candidates. Over 90% of the funding for newly elected Chicago Mayor Brandon Johnson came from public unions.

- Today, public unions in America have about 7 million members, collecting over \$5 billion annually in dues. Most of these funds are spent on direct or indirect political activity. That's \$20 billion in every four-year election cycle. Public unions more or less own the Democratic Party. About 10% of delegates to the Democratic National Convention are members of teachers unions.
- Examples of some of the absurd negotiated contractual provisions include a "constant staffing" model that mandates staffing at all hours, whether or not needed. Overtime is required whenever someone is sick, on vacation, or doing mandatory training." "A requirement to pay overtime for the entire day if one hour of overtime is worked at the beginning." Collecting overtime for regular workdays after the public employee deems an earlier weekday a sick day or vacation day."
- Until the 1960s, leaders such as Franklin Roosevelt had firmly rejected public unionization, public employees owed a fiduciary duty to serve the public interest, not bargain against it.
- The power of governing is a trust committed by the people to the government," the Supreme Court has held, "no part of which can be granted away." This non-delegation doctrine is enshrined in the Constitution for state and local government in the guarantee clause of Article 4: "The United States shall guarantee to every state in this Union a Republican Form of Government." What this means, according to James Madison, is that governing power cannot be ceded to any "nobles" or other "favored class." The Supreme Court has never enforced the guarantee clause, but nor has it ever been presented with a case in which vital tools of executive power - accountability and managerial power - have been removed.

THE CORRELATION BETWEEN STRONGER MUNICIPAL UNIONS AND HIGHER TAXES

The one thing big spending states have in common is the immense power their municipal unions hold over those states' respective legislative chambers.

As noted above, we have always thought it odd that while a management team in the private sector could be arrested and jailed for accepting money from the union they are negotiating against, elected officials could take money legally and above board from the very unions against whom they are negotiating.

Why the double standard?

Analysis of this topic was provided in *Solutions to America's Problems*, authored by our center's executive director, Steve Levy. In the public sector, the management is composed of elected officials. Their three goals are reelection, reelection, and reelection. Endorsements, and the donations and legwork that come with them, give incumbents an enormous advantage over their challengers. Elected officials on both sides of the aisle are incentivized to play ball with these powerful unions. The result is a legislative process that gives unions disproportionate influence over the taxpayers who have to pay the bills that come with the contracts that are negotiated.

The facts bear out that the stronger the municipal union, the higher the personnel costs within that particular state, resulting in higher overall spending. The states of New York, California, New Jersey, Connecticut, Oregon and Hawaii are listed by either MarketWatch or [TurboTax](#) as having among the top ten highest taxes in the nation. Meanwhile, [MarketWatch](#) listed each of these states as being on the list of the top ten strongest union states in the nation.

Since these unions possess the power to make or break officials, union leadership has learned how to maximize their influence by marching candidates into their boardrooms a short time before election day. They lay out a paper with a number of boxes to check. This is the litmus test to determine whether the candidate will get the endorsement. It may be ten pieces of legislation that the union cares about. The candidates better check off all ten or they might be kissing that endorsement goodbye.

Make no mistake, these endorsements can be lucrative. In Suffolk County, New York, the Police Benevolent Association contributed over \$1.5 million to various candidates, with over \$800,000 going to the county executive candidate and \$285,000 to just one friendly vulnerable county legislator. In 2016, they spent over \$200,000 against an assemblyman who introduced legislation to end mandatory arbitration, which has inflated cop salaries over the \$200,000 mark. <https://www.newsday.com/long-island/politics/suffolk-police-unions-campaign-spending-1.39224811>

There's nothing illegal about accepting these donations. It's simply not realistic to demand that a candidate unilaterally disarm while the opposition candidate is free to be bankrolled by the union. The only fair way to resolve the problem is to ban the donations for all candidates who will vote on that union's contract.

The awesome power of public unions was exemplified in the aftermath of the tragic killing of George Floyd by an abusive Minneapolis police officer. The Wall Street Journal editorialized (June 10, 2020) on the extraordinary and over-the-top power of various municipal unions, including police and teacher collective bargaining units.

They noted how difficult it has become for governments to fire incompetent or errant teachers or police officers, despite mounting evidence that they deserve to be terminated. They cited the fact that the Minneapolis police officer charged with Mr. Floyd's murder had multiple previous complaints logged against him, yet he was still on the force.

The Journal cited our nation's most famous private labor leader, who said it all. Here's that passage from the Journal:

- This lack of accountability is endemic to government collective-bargaining. The AFL-CIO's legendary chief George Meany once [said](#), "It is impossible to bargain collectively with government." Collective bargaining in business is adversarial. The public unions sit on both sides of the bargaining table since they help elect politicians with whom they negotiate.
- Democratic lawmakers in particular depend on public unions for political support, and disciplinary protections are easy to give away in contract talks. Teachers unions are the most

powerful example of collective-bargaining, frustrating school reform and protecting lousy teachers, relegating low income and minority kids to failing schools.

- If big city Democrats really want to change police incentives rather than merely pass reform gestures, they'll have to address collective bargaining. Let's see if their social justice convictions overcome their desire for political backing from public unions.

The only thing we would add to the Journal's spot-on analysis is that often, especially on the local level, Republican incumbents are just as influenced by the public unions as are Democrats.

The relationship between these public unions and many of these officials has become an incumbent protection society.

These unions have further bolstered their power by having persuaded elected officials to transfer public tax dollars to the unions to be freed up to lobby full time for the unions' interests, including higher wages, benefits and perks.

Which begs the question: How can public funds be used to promote the lobbying of a union where there is no public benefit involved? Isn't that an unconstitutional transfer of public funds for private gain?

It's no accident that higher taxed states have legislatures far more under the spell of powerful municipal unions than is the case with lower taxes states. So, if you want a solution to high taxes, start by banning union donations to the officials who negotiate their contracts.

AN EXAMPLE FROM LONG ISLAND

[An expose](#) on outrageous salaries of some public employees on Long Island published by Newsday noted how pressure from the public unions on Long Island and New York have led us to the point where

A pool of Nassau County employees making more than \$300,000 nearly doubled last year, after Suffolk County saw a similar spike the year before.

A group of 178 current Nassau employees took home between \$300,000 and \$457,000 last year, up from 91 the year before. Suffolk saw a similar trend in 2023, when 258 employees made more than \$300,000 versus 81 the previous year...Nearly 240 Suffolk employees made more than \$300,000 in 2024.

Newsday quoted Lillian Clayman, a labor history professor at SUNY Old Westbury. Politicians gain power by satisfying union demands, Clayman said, describing the practice as a quid pro quo. "Nassau and Suffolk unions are very vocal about who they support and don't support," she said. "Any politician worth their salt who is looking for votes," she said, "is going to support good union contracts."

Ar Rafee of the Empire Center for Public Policy stated the following:

"The higher pay you see is kind of a product of how strong the [union] bargaining units are."

They're absolutely correct in their analysis that these outrageous salaries, overtime and pensions are a direct result of the undue influence of municipal unions on the elections of candidates for office. But don't blame the unions, or the elected officials for playing the game that prior officials made legal. Blame the politicians who refuse to reform the process.

Another solution to the huge pensions bulked up through excessive overtime is to ban overtime payments from being factored into the base of an employee's pension.

Our center's [analysis](#) on the unions' pressure to inflate pensions noted that if overtime was prohibited to be factored into pension calculations for all employees who retire in the future, state taxpayers could save \$50-\$80 billion over the next two decades.

The problems have now been identified, as have the solutions. The only question remaining is whether there will be the political will to effectuate them. Even when [changes were effectuated](#) by the New York State Legislature in 2011 to require new employees to contribute more toward their pensions and to limit the amount of overtime that could be factored into

pensions for new employees, the legislators, both Democrat and Republican alike, after intense lobbying from the municipal unions, voted in the dead of night in the last hours of the 2025 session to [undo](#) much of the positive Tier 6 reforms implemented over a decade earlier.

CAN PUBLIC FINANCING BE A REMEDY?

There is another route other than court challenges. It is through the use of the public financing system, which is now in place on the state level in New York and in other jurisdictions. A simple condition can be tied to the acceptance of public funds whereby no one can accept the public funds unless they first agree to refuse donations from the municipal unions and vendors doing business with that level of government..

UNIONS EVEN GET TAXPAYERS TO PAY FOR THEIR LOBBYING

We as a nation are in so many ways better off for having unions to advocate on behalf of workers' rights. But do taxpayers have an obligation to pay union leaders so they can be freed up from their regular jobs in order to lobby on behalf of the union? We think not. In fact, we believe the case can be made that such taxpayer subsidies are unconstitutional, or at least may violate state statutes against gifts with no public purpose.

The Suffolk County Executive's [2017 budget](#) called for cuts to numerous bus routes serving the working class, as well as cuts to a plethora of not-for-profit agencies. Meanwhile, the county could have freed up [\\$2-3 million](#) annually for these needed routes and agencies if they simply stopped paying for the concept of "union leave."

It is hard to comprehend why public sector management negotiates against a full slate of union leaders who are being paid by taxpayers to lobby against taxpayers' interests.

We fully respect and appreciate the important role the union leaders play in ensuring their hard-working members are properly protected (and fully support the concept that employees who get the benefits of a contract should have to pay their dues), but why should taxpayers be footing the bill for the union leaders to do their union work when the union leader is not performing any service for the taxpayer?

While we can appreciate the role of these leaders in their advocacy, such lobbying should be paid out of union dues. The present system allows a teacher, police officer or road paver within Public Works to no longer perform the public job they are paid for and allows them to shift to working partially, or sometimes full- time, on lobbying for the union. So not only is the taxpayer on the hook for the union lobbying job, but now must pay double to fund another employee to perform the duties formerly carried out by the worker on union leave. More ridiculously, the higher ups in the police unions have the taxpayers paying them for overtime money they could otherwise accumulate. One union boss was allowed to receive canine pay even though he wasn't assigned a dog.

At the same time that unions are being subsidized to the tune of \$3 million annually, the Police Benevolent Association (PBA) union fund in Suffolk is so flush that they are able to expend hundreds of thousands of dollars on lobbying for or against candidates and for a new building they purchased in Brentwood for \$4.5 million.

Wouldn't it make more sense to use money presently slated for union leave for our not-for-profits or bus routes that help the needy? New York is not alone in having to deal with this burden. In fact, over \$122 million a year of taxpayer funds are expended to provide union leave for federal union leaders, according to the Mackinac Policy Center in Michigan. Word is out that President Trump has been seeking a revocation of this policy.

Meanwhile, many localities and states are pushing to end this taxpayer expense; through legislation in Michigan and by lawsuits in Idaho and Pennsylvania. In 2014, an Arizona court held the practice as being an unconstitutional gift, only to be reversed on appeal.

Will New York taxpayers finally be spared this burden?

[Efforts by our Center](#) and via the Empire Justice Center to end these payments were thwarted by lower level courts. It's time for a new challenge that can be appealed to higher courts. And with painful cuts being implemented and the county selling off its buildings for cash, perhaps it's time for the legislature to reconsider as well.

GOVERNMENT AGAINST ITSELF

In his recent book *Government Against Itself*, Manhattan Institute Senior Fellow Dan DiSalvo, brilliantly underscores how municipal unions have managed to get elected representatives to do the union's bidding at the expense of the general public they were supposedly elected to represent.

The unions get to focus on their singular issues, while the general public is distracted with everyday life. The endorsements and monetary contributions that flow from the union to the elected officials further enhance the disproportionate impact the union holds on public policy.

Elected officials – who were supposed to be managers for the taxpayers' money – are actually sitting at the negotiation table acting as advocates for the unions – who are supposed to be their adversaries.

This would never happen in the private sector, since giving the store away to the union would lead to unprofitability, and potentially the collapse of the entire corporation. When the company goes out of business, no one is helped, including the union members who would lose their jobs.

In the public sector, however, there is no profit margin and the elected officials will continue to keep their jobs because there will always be a public taxpayer who will keep the government running via higher taxes. Until, that is, it reaches the breaking point, as was the case with Detroit, San Bernardino, and many other cities that filed for bankruptcy or became insolvent, necessitating the implementation of fiscal control boards to oversee their budgeting.

IF WE CAN BAN DONATIONS FROM VENDORS, WHY NOT UNIONS?

A recent [exposé](#) in Nassau County underscored the lax oversight provisions for granting outside contracts. It has led to a call for banning donations from county contractors to elected officials.

It's interesting, however, that we rarely hear a call from pundits, elected officials or editorial boards to ban donations from municipal unions to the very same officials who will negotiate their contracts.

Many folks wonder how we ever could've gotten to the point where law enforcement personnel on Long Island are [earning over \\$225,000](#) a year, with \$150,000 pensions and over 100 paid days off a year.

How did we get to the point where a bad teacher can do just about anything up to the point of committing murder and still keep his or her job?

How did we get labor rules that pay employees of the quasi-governmental MTA double time for simply working on a different train on the same shift?

How did we devise a system that often [pays disabled police](#) and firefighters more money for staying home than if they are actually working?

The answer is easier to understand once one considers the cozy relationship that municipal unions have with elected officials. Even Franklin Roosevelt, whom many consider the father of Liberalism in the 20th Century understood the dangers inherent in having elected officials being lobbied by municipal unions which can provide or withhold endorsements of their reelections. The pro labor president [declared](#):

[a]ll 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.

We truly have created a system where government is now working against itself. Or, stated another way, where government is now working so diligently against the very taxpayers it is supposed to be representing.

Why is it that if you wanted to find editorials critical of donations given to elected officials by government contractors they'd be easy to find with a Google search, yet it's much harder to find editorials calling for a same ban of union donations.

A proposal in the Suffolk County Legislature in New York sought to ban donations from county vendors, but conspicuously omitted a ban of donations from the municipal unions.

The effort to ban donations from vendors during the periods they are seeking a contract has gained steam on a high level in New York as the State Comptroller has introduced legislation to Prohibit Campaign Contributions During an Act of Procurement in New York.

Bill S.9697 of the New York state legislature seeks to make it unlawful for a vendor to make direct or indirect contributions to an elected state official, a candidate for a statewide elected office, or their authorized political committee during a certain restricted period. The bill would require a candidate, officeholder, or political committee that receives such contributions to return or refund the contributions and requires procurement contracts to contain a statement that the vendor awarded the contract has not made any such contributions.

THE CAPERTON CASE

As noted above, it is highly unlikely that Legislators will enact new laws to prohibit donations flowing from municipal unions to the same officials who negotiate their contracts.

But the quest to eliminate these conflicts should not end with the legislature. A much better bet to foster an unbiased legislature is through the court system.

Perhaps the most logical analogy that can be made to the bias held by legislators who've just received contributions from municipal unions are the court cases related to judges who were forced to recuse themselves from matters where they had taken campaign contributions from one of the parties in matters before them.

The preeminent case on this issue was *Caperton V Massey Coal Co.*, 556 US 868 where in the year 2009 the United States Supreme Court held that the aggrieved party's right to due process under the United States Constitution was violated because the judge deciding his case had received significant campaign contributions from the other party in the action.

How can we say that the due process clause applies to a party in an action where the judge has taken campaign contributions by the opposing party and yet simultaneously claim that taxpayers who are a party to contract negotiations do not have their due process rights violated when the other party - being the union - has given significant sums of money to the people's representatives at the bargaining table?

The details of the CAPERTON case, as reviewed by [Oyez](#) is as follows:

In October 1998, Hugh Caperton filed suit against A.T. Massey Coal Co., Inc. (Massey) for tortious interference, fraudulent misrepresentation, and fraudulent concealment. A state trial court in West Virginia rendered judgment against Massey and found it liable for \$50 million in damages. The Supreme Court of Appeals of West Virginia granted review. However, prior to hearing, Mr. Caperton motioned for Justice Brent Benjamin to recuse himself. He argued that since Massey's C.E.O. had donated \$3 million to Justice Benjamin's campaign to win a seat on the Supreme Court of Appeals, Justice Benjamin's participation would present a "constitutionally unacceptable appearance of impropriety." The motion was denied. In a 3-2 decision with Justice Benjamin voting in the majority, the Supreme Court of Appeals reversed the trial court and ordered it to dismiss the case. After its decision, the court granted Mr. Caperton's motion for rehearing, but once again denied his motion for Justice Benjamin to recuse himself. On rehearing, the court maintained in a 3-2 decision that the trial court should be reversed and the case dismissed. It reasoned that a forum selection clause in a contract between the parties made the trial court in West Virginia an improper venue. It also concluded that because the parties had previously adjudicated the dispute in a Virginia state trial court, the doctrine of res judicata did not allow this case to be retried.

Question

Did Justice Brent Benjamin's failure to recuse himself from participation in a case where one of the parties donated \$3 million to his election campaign violate the Due Process Clause of the 14th Amendment?

Yes. The Supreme Court held that due process required that Justice Brent Benjamin recuse himself from participation in the case in question. With Justice Anthony M. Kennedy writing for the majority and joined by Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg,

and Stephen G. Breyer, the Court stated that it need not find that Justice Benjamin was actually biased in his decision making in order to find invalid the decision in which he took part. Rather, it need merely be shown that "under a realistic appraisal of psychological tendencies and human weakness," Justice Benjamin's interest posed "a risk of actual bias" and thus he should have recused himself if his participation threatened the adequate implementation of due process. The Court stated that such a risk of bias exists where a judge has a "direct, personal, substantial, pecuniary interest," as Justice Benjamin did. Therefore, the Court reasoned, he improperly failed to recuse himself.

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Notice that it was not necessary to establish a quid pro quo; that is, there did not have to be an overt agreement between the judge and the party giving the money that the judge would rule in their favor upon receiving the donation.

The fact that there was "a risk of actual bias" meant that the judge had to be removed from the case and that the aggrieved party's due process rights were violated.

It is essential to note that the Court held that "...the due process clause has been implemented by objective standards that do not require a proof of actual bias." See *Tumey v. Ohio*, 273 US 510.

Rather, the question is whether, "under a realistic appraisal of psychological tendencies and human weakness," the interest "poses such a risk of actual bias or prejudice that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Withrow*, 421 U. S., at 47.

There is a serious risk of actual bias -based on objective and reasonable perceptions- when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent.

While the matter before the court related to donations given to a judge, and not a legislator or council member, a clear analogy can be made.

As it may pertain to union donations, it should not be necessary to prove that there was an actual quid pro quo, if we apply the logic of Caperton. It is equally irrelevant that the officials believed they could retain their impartiality. The test is not whether a judge or an official subjectively believes he or she can retain impartiality; the test is an objective one that relates to what an average reasonable judge or official would be subject to influence and bias. The court concluded:

It is not whether the contributions were a necessary and sufficient cause of Benjamin's victory. In an election decided by fewer than 50,000 votes, Blankenship's campaign contributions—compared to the total amount contributed to the campaign, as well as the total amount spent in the election—had a significant and disproportionate influence on the outcome.

Due process requires an objective inquiry into whether the contributor's influence on the election under all the circumstances **"would offer a possible temptation to the average... judge to... lead him not to hold the balance nice, clear and true."** Tumey v. Ohio, supra, at 532. (Emphasis added)

"[e]very procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." Tumey 273 U. S., at 532.

Benjamin refused to recuse himself, claiming that he was not influenced by the donations. The court, however, ruled his subjective position on his being influenced was irrelevant:

"We [do not question](#) his subjective findings of impartiality and propriety. Nor do we determine whether there was actual bias." ***

There is no allegation of a quid pro quo agreement, but the extraordinary contributions were made at a time when Blankenship had a vested stake in the outcome. Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when—without the other parties' consent—a man chooses the judge in his own cause. Applying this principle to the judicial election process, there was here a serious, objective risk of actual bias that required Justice Benjamin's recusal.***

Likewise, as it pertains to an elected official negotiating or voting on a union contract, the standard would be an objective one...whether the contributions would impact the judgement of the average official.

How can it logically be said that an elected official who has taken thousands of dollars in donations from that union during the campaign, and may be anticipating further contributions in the next campaign, would not be significantly influenced and biased by accepting those donations? There is at the very least a risk of actual bias, which was the standard set in Caperton.

Now, certainly, the unions will claim that the taxpayers are not parties to a legal proceeding, but they are in fact parties to a negotiation that will, to a significant degree, determine how much they will be taxed in the upcoming budget. They have an interest in the outcome the same way litigants have an interest in the outcome of their lawsuit.

If the judge in that lawsuit is tainted by having accepted donations from the opposing party, then the elected officials representing the taxpayers will also have been tainted by accepting donations from the union they are opposing on the opposite side of the table.

If, under the Caperton holding, the judge would have to be recused from ruling on the case, then the officials should have to recuse themselves as well in the contract negotiations..

If the due process rights of the litigant is violated by having a judge tainted by having accepted donations, then the due process rights of the taxpayers will have been violated when the unions are able to exert undue influence on the elected officials via their donations.

We, therefore, believe that the time is right for a lawsuit to be initiated for the purpose of securing a judicial holding that a taxpayer's due process rights under the United States Constitution has been violated when their elected representatives have accepted donations from the unions against whom they are negotiating on behalf of the taxpayers.

The success of such litigation would have landmark, resounding positive implications for generations to come. Take for instance the fact that [90 cents of every dollar](#) in a tax hike recently passed in Illinois goes toward propping up its bloated pension system.

States are on the cusp of fiscal collapse because elected officials are doing the bidding for the unions who fill their campaign coffers rather than the people - the taxpayers- whom the officials are supposedly elected to represent.

The rights of the taxpayers to have their elected officials govern on behalf of their interests and not be outsourced to arbitrators or union leaders, as is often the case with municipal unions, is a fundamental right secured by the Guarantee Clause in the Constitution.

The due process rights of taxpayers cannot be violated by their elected representatives becoming tainted via union donations.

These are the very reasons two of the greatest champions of the 20th Century union movement in America - George Meany and President Franklin Roosevelt - believed that unions in the public sector should not be capable of negotiating contracts, thereby forcing the government to negotiate against itself.

It is remarkable that such a common sense proposition has not yet made its way up the Supreme Court. The time has come.

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