

Floor Statement of Senator Michael B. Enzi

on the Public Safety Employer-Employee Cooperation Act

December 8, 2010

Mr. President, I rise today to voice my opposition to S. 3991, the so-called Public Safety Employer-Employee Cooperation Act. I have a number of policy and constitutional concerns about this bill and I have expressed them over the years, but I have never had the opportunity to work with the bill's supporters to address those concerns. Even though this legislation falls within the HELP Committee's jurisdiction, the Committee has never held a hearing on the bill and has only marked it up without amendment or written report.

Any objective consideration of this bill reveals that it is based on poorly reasoned policy. Over the last 7 years the proponents of this bill have only brought it directly to the floor, and purposely circumvented the regular order of the

Senate and its Committee processes, perhaps because the scrutiny of that process would expose the multiple flaws in this legislation. Rather than addressing this bill on the merits, its proponents have decided, once again, to play the sound bite game. Their calculation is simple – since this bill involves unions that organize among police and firefighters, they will continue to simply claim that anyone who opposes the bill is against police and firefighters.

Let's address that calculated untruth first. There is no one I know of, Republican or Democrat, supporter or opponent of this bill, who does not respect and value the work and dedication of our police, firefighters and first responders. Their contributions to our communities are immeasurable and our support for them unwavering. However, this bill provides no direct benefit to any police officer, firefighter, or first responder. It doesn't provide a dime in federal money to any state, city or town to hire, train or equip any additional

public safety personnel. In fact, it simply imposes costs that will make that result *less* likely. It is arguably one of the biggest and most dangerous unfunded mandates the federal government has ever imposed.

In fact, there are a number of law enforcement groups opposing this bill. The National Sheriffs' Association, the International Association of Chiefs of Police and the Fraternal Order of Police have all come out against S. 3991. I think we have to ask – if all of these law enforcement groups oppose the bill, is it really a good idea to pass it in the last days of a lame duck Congress?

Plain and simple, the only direct beneficiaries of this legislation are labor unions. You see, while unionization in the private sector has been on a historical down trend, unionization in the public sector has been increasing. In 2009, 37.4 percent of public sector employees were

unionized, compared to just 7.2 percent in the private sector. Government workers are now five times more likely to belong to a union. For the first time in our country's history the majority of union members are public sector employees, not private sector employees. Public sector unions have been the only area of growth for unions for many years, and as we all know, organizations need growth to survive.

Let me now turn for a moment to some of the serious and fundamental problems with this legislation. For over seventy years, a hallmark of our nation's labor policy has been the principle that employment and labor relations between a state, city or town, and its own employees, should not be a matter of federal law, but a matter of local law. That bedrock principle is not only rooted in our national labor policy, it is firmly fixed in our Constitution and our traditions of federalism. Yet, today the proponents of this bill seek to overturn this hallmark principle and to radically change

decades of unbroken federal law and policy. The enormity of this change is only matched by the prospect that it could occur as a result of total disregard for processes of the Senate and the complete absence of any meaningful opportunity for modification.

You would think the Senate would consider such a bill only after careful examination and due deliberation. Sadly, you would be wrong. This legislation has not had a Senate Committee hearing or markup this Congress, or the two Congresses before this one. The HELP Committee has never held a hearing on this bill. This bill grants enormous power over states to a virtually unknown Federal agency. Yet we have never so much as asked a representative sampling of state officials for their views, nor have we ever even informally asked the Federal agency involved if it feels up to the job we'd impose on it. These short-comings alone

show that this bill is being pushed not because it is good policy, but because some see it as expedient politics.

This bill would require that every state, city and town with more than 5,000 residents open its police, firefighters and first responders to unionization. It would impose this federal mandate not in the absence of any state consideration of this issue, but in direct opposition to the legislative will of several states. Proponents of this legislation have attempted to maintain the fiction that it actually does little to disturb state laws. That is simply not the case.

This bill would expressly overturn the law in 22 states. In fact, sixteen states have specifically considered **and rejected** legislative proposals similar to the law that would be federally imposed under this bill in recent years. Some states, such as Wyoming, have chosen to either extend

collective-bargaining in a more limited manner than the bill before us would mandate, or not to extend it at all.

Proponents of this bill have told Senators from states that do have “full” public sector collective-bargaining laws that this bill would not change anything in their respective home states. However, labor experts have identified at least 12 of those states where the viability of one or more provisions of their own current state law would be in question if this bill were enacted. Supporters of the bill base their argument on a provision which allows the Federal Board that will be ruling over all these states to ignore instances where the state law is not as broad as the federal mandate if “both parties” agree that it is sufficient. Make no mistake, this provision is completely hollow.

First, there are hundreds to thousands of “parties” that will have the authority to agree or disagree about the sufficiency

of a state's law. Every public safety officer and his or her employer will have this authority. The term "Public Safety Officer" is so broadly defined in this bill that many employee groups that may surprise you meet the definition, such as paramedics, lifeguards, security guards and more. What are the odds of all of these groups agreeing to look the other way? Further, anyone who has ever been a party to negotiation knows about leverage. The ability to place one phone call and have an entire state's law on a subject overturned and taken over by the federal government is some of the most powerful leverage I have ever heard of.

Let's be completely clear about what this legislation would do. A vote for this bill is a vote to overturn the law and the democratic will of the citizens of many of our states, and to invalidate the democratic action of their voters and legislators. That is why Mayors of major U.S. Cities that already provide collective bargaining rights also oppose the

bill. New York City Mayor Bloomberg, along with the Mayors of Boston, Cleveland, Denver, Minneapolis, San Diego, Philadelphia and Mesa, Arizona all wrote to the Senate yesterday asking us not to enact this poorly thought out bill. And it isn't just the chief executives objecting. Major newspapers across the country such as the Denver Post, the Richmond-Times Dispatch and the Washington Post have editorialized against this proposal. [I ask that these materials be placed in the record at the end of my statement.]

I formerly served as the Mayor of Gillette, Wyoming, a city of some 20,000 people. As I look around this Chamber there are too few here that have any experience with trying to balance a budget for a city or town, which may explain why this unfunded mandate proposal is being brought up with so little attention given to how it will exacerbate the dire financial situation of states and municipalities.

A recent report by the National League of Cities (“NLC”) found that municipalities will face a shortfall between \$56 billion and \$83 billion from 2010 to 2012. Headlines across the country confirm that city leaders are responding to deficits with layoffs, furloughs, payroll deductions and cutting city services, all of which will impact police, fire and emergency services departments. This week it was Camden, New Jersey laying off 383 employees, including 67 firefighters and up to 180 police officers.

Another survey found 87% of city finance officers said that they were “less able” to meet the city’s fiscal needs in 2010, than a year before. The outlook for states is just as dire, especially considering that federal stimulus dollars, which many states have used to partially fill budget gaps, will run out after 2012. States will face an estimated \$300 billion budget shortfall for 2011 and 2012. And the extent to which

states and municipalities are facing underfunded public employee pensions is truly staggering. A PEW Center on the States report out this year pegs it at a \$1 trillion gap.

During this downturn cities across America are struggling to maintain solvency. Unlike the federal government, they cannot print money – they have to actually balance their budgets. Here is the reality. Without regard to pay or benefits, just the administrative costs alone of collective bargaining represent a very significant line item that Congress now proposes to force on states, cities and towns. Towns, particularly small towns, that currently don't have the resources to negotiate and administer multiple collective-bargaining agreements must now hire and pay for these additional services. Towns and cities that do not devote the long hours of municipal time to the complicated process of bargaining, and overseeing multiple union contracts, and to administering contract provisions and resolving disputes

under a collective-bargaining system will be required to spend that time. Nobody should be fooled. Those additional, manpower and man-hour requirements are enormously costly and burdensome. This bill would impose those costs by federal mandate, but would not provide a single penny of federal money to help offset those costs.

As a former Mayor, and as the only accountant here in the Senate, I would remind my colleagues about the cold realities of municipal finance. If you increase municipal costs you have only two ways to meet those increased costs – either increase revenues, or decrease services. This bill will unquestionably place many municipalities in the difficult position of choosing between raising state and local taxes, or decreasing and eliminating local municipal services.

Mere consideration of this bill today reveals that many in this body remain sadly out of touch with the real needs of our

constituents and the real fiscal problems that their cities and towns face every day. With stagnant or declining property values and an endless parade of increasing fixed costs, don't our cities and towns already have enough on their plate without the Federal government imposing more new costs?

Mr. President, since the legislation before us has not gone through committee process, I have a number of amendments I will have to offer here on the floor. These amendments are directed towards protecting the fiscal health of communities that fall under this mandate, ensuring the integrity of public safety service organizations, and preventing union abuse of public sector employees, among other issues. But these problems represent only the tip of the iceberg. If this body decides to take this issue up today and spend the next week debating it, you will hear more detail on my concerns and those that will be raised by other Senators opposed to this proposal.

Mr. President, I urge my colleagues to oppose the motion on the Public Safety Employee-Employer Cooperation Act. I yield the Floor.