



**Dear Senator**

HB 85 Union Security Agreements will soon be heard on the Senate floor. You took an oath to support and uphold the New Mexico Constitution – not when it’s convenient or easy, but all of the time. I urge you to support our constitution now and oppose HB 85 for the following reasons: (Constitutional issues in paragraphs 3, 4 and 6)

**1. The Counties’ right to pass a Right to Work (RTW) ordinance:** These ordinances were all passed pursuant to the counties’ police powers to promote the economic prosperity of the counties’ inhabitants. The legislature has expressly conferred upon counties the power to promote the prosperity of their inhabitants: **“Included in the “grant of powers to the counties are those necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort, and convenience of any county or its inhabitants.” NMSA 1978, § 4-37-1 (referred to as the counties’ “police powers”).** This statutory grant of authority to counties is arguably broader than that conferred upon municipalities in Kentucky, where local right to work ordinances have been upheld. See, e.g., KRS 067.083. “It is not necessary that a grant of powers to counties or other municipal corporations contain a specification of each particular act to be done, but it is sufficient if the words used are sufficiently comprehensive to include the proposed acts; an express authority might be general as well as particular.” *Agua Pura Co. v. Mayor of Las Vegas*, 60 P. 208 (N.M. 1900).

Accordingly, the counties are entitled to enact local ordinances to promote the prosperity of their inhabitants. This use of police powers to promote economic prosperity of a municipality’s inhabitants was upheld in a case that challenged Santa Fe’s minimum wage ordinance. In *New Mexicans for Free Enterprise v. The City of Santa Fe*, 2006-NMCA-007, ¶ 72, 138 N.M. 785, 126 P.3d 1149, the New Mexico Court of Appeals stated that a municipality can set a minimum wage rate affecting employers in its jurisdiction because “a home-rule municipality can enact ordinances affecting private employers and employees under its police powers.” Right to work, designed to promote prosperity, is of the same ilk as the minimum wage ordinance upheld in that case.

**2. Preemption:** HB 85 Section 1 D. *A city, county, home rule municipality or other political subdivision of the state shall not adopt nor continue in effect any ordinance, rule, regulation, resolution or statute that prohibits the negotiation, execution or application of agreements requiring membership in a labor organization as a condition of employment in New Mexico.*

The N.M. legislature has never preempted a county’s right to pass employment related ordinances, such as minimum wage or sick leave. In fact, every attempt to pass preemption legislation has failed because the legislature said that counties should be able to make those decisions for their constituents.

**3. Selective Preemption:** Under the **New Mexico Constitution, Article 4, Section 24,** **“the legislature shall not pass local or special laws in any of the following cases: regulating county, precinct or district affairs[.]”** As discussed above, promoting the prosperity of a county’s inhabitants rests soundly within the province of “county affairs.”

**Selective Preemption:** (continued from other side) A “special law” is one that affects only a certain class of persons or things. *Albuquerque Metro Arroyo Flood Ctrl. Auth. v. Swinburne*, 1964-NMSC-206, ¶ 5. If the legislature were to preempt local right to work ordinances, such preemption would constitute a “special law” to the extent that it would affect only certain provisions and employees in the context of private collective bargaining. The legislature must refrain from passing special laws that regulate county affairs.

**4. HB 85 may be unconstitutional:** There is pending litigation regarding the Sandoval County Right to Work ordinance. See *Int’l Brotherhood of Electrical Workers, AFL-CIO, Local 611 v. Sandoval County*, D-1329-CV-2018-00423. **Under the New Mexico Constitution, Article 4, Section 34, “no act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case.”** If the legislature were to enact legislation retroactively preempting local right to work ordinances, such legislation would affect the rights and remedies of the parties to the Sandoval County litigation, thus rendering any retroactive preemption unconstitutional.

**5. Bipartisan support for RTW ordinances:** RTW ordinances have passed in 10 counties (Sandoval, San Juan, McKinley, Lincoln, Sierra, Otero, Chaves, Eddy, Roosevelt, and Lea) and the Village of Ruidoso with bipartisan support. McKinley County, a fully Democrat-controlled commission, was the latest county to pass the RTW ordinance.

**6. Retroactive action by the state: To make this measure retroactive is just wrong and may violate the New Mexico Constitution, Article 2, Section 19: “No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature.”** We have 10 counties and the Village of Ruidoso that have passed a RTW ordinance in a bipartisan manner for over 650,000 New Mexicans.

**7. Forced Union Membership:** HB 85, Section 1B, states, “*An employer or labor organization anywhere in the state may execute and apply an agreement requiring membership in a labor organization as a condition of employment to the full extent allowed by federal law*”. **Regardless of what anyone thinks about RTW, requiring someone to join a union as a condition of employment is just wrong.**

**8. Right to Work is Right for New Mexico and simply allows workers a choice about union membership and paying union dues. It is NOT a union busting measure. In fact, according to the latest U.S. Bureau of Labor Statistics ([www.bls.gov/CPS](http://www.bls.gov/CPS)) from 2017 to 2018: **Union membership increased 22,000 in Right to Work states and decreased 137,000 in Non-Right to Work states.****

**9.** The RTW county ordinance does not apply to hiring halls, so there is no confusion about a union worker being assigned to a temporary job, such as construction, in a RTW county. The worker maintains union membership and nothing changes while they are on that job.

**10.** Some of the lowest poverty states in the U.S. are RTW states: Idaho, Wyoming, Wisconsin, Virginia, Missouri, Iowa, Utah, etc.

**11.** New Mexico, a non RTW state, is among the poorest states in the U.S. (U.S. census). Shouldn’t we allow those counties that passed RTW ordinances the opportunity to see if they will work?