STANDING WITH PUBLIC SERVANTS: PROTECTING THE RIGHT TO ORGANIZE

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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C O N T E N T S

STANDING WITH PUBLIC SERVANTS: PROTECTING THE RIGHT TO ORGANIZE

Wednesday, June 26, 2019
House of Representatives,
Subcommittee on Health, Employment,
Labor, and Pensions,
Committee on Education and Labor,
Washington, DC

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2175, Rayburn House Office Building, Hon. Frederica Wilson [chairwoman of the subcommittee] presiding.

Present: Representatives Wilson, Norcross, Morelle, McBath, Underwood, Stevens, Courtney, Fudge, Harder, Shalala, Levin, Trahan, Scott (ex officio), Walberg, Roe, Allen, Banks, Taylor, Watkins, Wright, Meuser, Johnson, and Foxx (ex officio).

Also present: Representatives Kildee, Finkenauer, Fitzpatrick, and Cline.

Staff present: Tylease Alli, Chief Clerk; Ilana Brunner, General Counsel; David Dailey, Senior Counsel; Kyle DeCant, Labor Policy Counsel; Emma Eatman, Press Assistant; Mishawn Freeman, Staff Assistant; Eli Hovland, Staff Assistant; Stephanie Lalle, Deputy Communications Director; Jaria Martin, Clerk/Assistant to the Staff Director; Kevin McDermott, Senior Labor Policy Advisor; Richard Miller, Director of Labor Policy; Max Moore, Office Aide; Veronique Pluviose, Staff Director; Banyon Vassar, Deputy Director of Information Technology; Katelyn Walker, Counsel; Joshua Weisz, Communications Director; Cyrus Artz, Minority Parliamentarian; Courtney Butcher, Minority Director of Coalitions and Member Services; Akash Chougule, Minority Professional Staff Member; Cate Dillon, Minority Staff Assistant; Rob Green, Minority Director of Workforce Policy; Bridget Handy, Minority Communications Assistant; John Martin, Minority Workforce Policy Counsel; Hannah Matesic, Minority Director of Operations; Carlton Norwood, Minority Press Secretary; Brandon Renz, Minority Staff Director; and Ben Ridder, Minority Legislative Assistant.

Chairwoman WILSON. The Subcommittee on Health, Employment, Labor, and Pensions will come to order.

Welcome, everyone. I note that a quorum is present.

I note for the subcommittee that Congressman Dan Kildee of Michigan, Congresswoman Abby Finkenauer of Iowa, Congressman Brian Fitzpatrick of Pennsylvania, and Congressman Ben Cline of

Virginia will be participating in today's hearing, with the understanding that the questions will come only after all members of the HELP Subcommittee and any members of the full committee on both sides of the aisle who are present have had an opportunity to question the witnesses.

The subcommittee is meeting today in a legislative hearing to receive testimony on "Standing with Public Servants: Protecting the Right to Organize."

Pursuant to committee rule 7(c), opening statements are limited to the chair and the ranking member. This allows us to hear from our witnesses sooner and provides all members with adequate time to ask questions.

I recognize myself now for the purpose of making an opening statement.

Today, we are gathered for a legislative hearing to receive testimony on the status of public-sector collective bargaining and the legislative proposals which ensure State and local government employees can exercise this right.

Labor unions have empowered generations of workers to secure better wages and working conditions. They have been essential to reducing income inequality. Collective bargaining agreements are especially important in closing the gender and racial wage gaps because labor agreements ensure equal pay for comparably situated and educated individuals in the workplace.

Based upon personal experience, I know the benefits unions provide for public employees. When I was a teacher in the Miami-Dade County Public Schools system, I was also a member of the United Teachers of Dade union. So I was very, very disappointed to see Florida pass H.B. 7055, which singles out teachers' unions, forcing them to conduct unnecessary elections in an effort to weaken teachers' ability to advocate for themselves.

Public-sector union benefits also extend beyond union members to benefit nonunion members. Research shows that, since the 1930's, workers' ability to unionize has corresponded to lower income inequality.

Despite these widely enjoyed benefits, the Federal Government does not ensure State and local government employees consistent organizing rights nationwide. What we do know is that as many as half of all nonunion workers would vote for a union if given the opportunity.

As our witnesses will testify, State and local government employees face an inconsistent patchwork of State labor laws which leaves far too many public servants behind. And, in fact, four States lack any regulation for public employees' organizing rights, and many more have lackluster collective bargaining regulations which do not compel employers to negotiate with employees.

To make matters worse, last year, in the Janus v. AFSCME decision, the Supreme Court ignored 4 decades of legal precedent and 23 State laws to sabotage public-sector unions. The Janus decision denies unions the right to collect fair-share fees for services that they are legally required to provide, which fundamentally undermines public service workers' ability to collectively bargain.

Congress has both the power and responsibility to protect the organizing and collective bargaining rights of all workers, no matter

where they live or work. This Congress, two bills have been introduced—the Public Service Freedom to Negotiate Act of 2019, H.R. 3463; and the Public Safety Employer-Employee Cooperation Act, H.R. 1154—that will improve the lives of public-sector employees employed at the State and local levels.

One legislative proposal that helps to protect public servants is the Public Service Freedom to Negotiate Act of 2019, which guarantees public employees the right to negotiate and unionize for better working conditions.

Specifically, the bill will create minimum standards for collective bargaining rights that all States must meet, while ensuring that States have flexibility in how that goal is effectuated.

While the Public Service Freedom to Negotiate Act of 2019 cannot correct the Supreme Court's misreading of the Constitution in Janus, it can lessen the consequences by strengthening the rights of public service workers.

Another bill that will help public servants is the Public Safety Employer-Employee Cooperation Act, which similarly protects first responders' right to organize by setting minimum standards for collective bargaining.

On June 20, 2007, this bill was reported out of this committee by a vote of 42 to 1. Let me repeat: This bill was reported out of the Education and Labor Committee by a vote of 42 to 1. Then-Ranking Member Buck McKeon, whose portrait hangs on the wall to my right, supported this legislation.

And when this bill came to the floor on July 17, 2007, it was considered under suspension of rules and passed by a vote of 314 to 97. Let me restate that point. It came to the floor with broad, bipartisan support, and it was deemed noncontroversial. And it passed with the support of over two-thirds of the House of Representatives.

This historical note is important because it reinforces the fact that backing up public employees' rights to collectively bargain has been a bipartisan endeavor in the not-too-distant past.

These two bills reflect our commitment to ensuring that teachers can earn decent pay, police officers and firefighters are compensated for their service, and public service workers can continue to fulfill their vital roles in communities across the country. The people who keep our communities safe, teach our children, and risk their lives to save ours deserve the same respect and protections as those employed in private industry.

I look forward to hearing from our witnesses today and the discussion that will ensue.

I now recognize the ranking member, Mr. Walberg, for an opening statement.

Mr. Walberg, the esteemed Mr. Walberg, our ranking member.

[The statement of Ms. Wilson follows:]

Prepared Statement of Hon. Frederica S. Wilson, Chairwoman, Subcommittee on Health, Employment, Labor, and Pensions

Today, we are gathered for a legislative hearing to receive testimony on the status of public sector collective bargaining and the legislative proposals which ensure State and local government employees can exercise this right. Labor unions have empowered generations of workers to secure better wages and working conditions. They have been essential to reducing income inequality.

Collective bargaining agreements are especially important in closing the gender and racial wage gaps, because labor agreements ensure equal pay for comparably situated individuals in the workplace. Based upon personal experience, I know the benefits unions provide for public employees. When I was a teacher in the Miami-Dade County Public Schools system I was also a member of the United Teachers of Dade union. So, I was very disappointed to see Florida pass H.B. 7055, which singles out teachers' unions, forcing them to conduct unnecessary elections in an effort to weaken teachers' ability to advocate for themselves.

Public sector union benefits extend beyond union members and also benefit non-union members. Research shows that, since the 1930's, workers' ability to unionize has corresponded to lower income inequality. Despite these widely enjoyed benefits, the Federal Government does not ensure State and local government employees' consistent organizing rights nationwide. What we do know is that as many as half of all non-union workers would vote for a union if given the opportunity.

As our witnesses will testify, State and local government employees face an inconsistent patchwork of State labor laws that leaves far too many public servants behind. In fact, four States lack any regulation for public employees' organizing rights and many more have lackluster collective bargaining regulations that do not compel employers to negotiate with employees.

To make matters worse, last year in the Janus v. AFSCME (AFF-SSS-MEE) decision, the Supreme Court ignored four decades of legal precedent and 23 State laws to sabotage public sector unions. The Janus decision denies unions the right to collect "fair share fees" for services they are legally required to provide, which fundamentally undermines public service workers' ability to collectively bargain. Congress has both the power and the responsibility to protect the organizing and collective bargaining rights of all workers—no matter where they live or work.

This Congress two bills have been introduced, the Public Service Freedom to Negotiate Act of 2019 (H.R. 3463) and the Public Safety Employer-Employee Cooperation Act (H.R. 1154), that will improve the lives of public sector workers employed at the State and local levels.

One legislative proposal that helps to protect public servants is legislative proposals like the Public Service Freedom to Negotiate Act of 2019, which guarantees public employees the right to unionize and negotiate for better working conditions.

Specifically, the bill will create minimum standards for collective bargaining rights that all States must meet, while ensuring that States have flexibility in how that goal is effectuated.

While the Public Service Freedom to Negotiate Act of 2019 cannot correct the Supreme Court's misreading of the Constitution in Janus, it can lessen its consequences by strengthening the rights of public sector workers.

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These two bills reflect our commitment to ensuring that teachers can earn decent pay, police officers and firefighters are compensated for their service, and public service workers can continue to fulfill their vital roles in communities across the country.

The people who keep our streets clean, teach our children, and risk their lives to save ours, deserve the same respect and protections as those employed in private industry. I look forward to hearing from out witnesses today and the discussion that will ensue.

I now recognize the Ranking Member, Mr. Walberg, for an opening statement.

Mr. WALBERG. Well, thank you, my friend and chairwoman, for yielding to me on this beautiful day.

And those in the audience don't have the opportunity, unless you turn your head, to see how beautiful it is around Washington, DC. And as we get into this debate, I hope we remember that things are still pretty good. But this is a debate worth having.

The two pieces of legislation we are here to discuss today are, I believe, another Democrat attempt to put the thumb on the scale in favor of forced unionization. And they also show no regard for the system of federalism on which this Nation was founded.

H.R. 1154, the Public Safety Employer-Employee Cooperation Act, and the Public Service Freedom to Negotiate Act, disregard the will of the voters in every State by imposing a one-size-fits-all labor relations mandate enforced by Federal bureaucrats in Washington, DC. If there is one thing this country doesn't need, it is more Federal overreach. We can be better than that, and, as policymakers, shame on us if we are not.

The Founding Fathers spent countless critical hours in debate—and they did debate—deliberating a system of checks and balances that would ensure that individual States were not unreasonably controlled by the Federal Government. That is our foundation.

Today, States have legitimate concerns with public-sector collective bargaining, which is why even union-dominated States place some limitations on this practice.

Rather than impose its will on individual States, Congress should respect these differences of opinion among the States and allow them to remain laboratories, as it were—especially as we talk about education and labor—laboratories of democracy in determining their own public employee labor law.

We should all know by now that government unions create perverse incentives that do not exist in the private sector. They can't exist in the private sector. Government unions are an enormously powerful political force.

While all Americans are free to join together, and should be—this side of the aisle would not reject that—free to join together and engage in the political process, government unions can essentially elect their own employer—in other words, Governors and State and local lawmakers—with whom they negotiate collective bargaining agreements.

These practices often force exorbitant, seemingly unlimited cost on the taxpayers, the people who pay the bill and expect the service, an unfortunate circumstance which is markedly different than negotiating with companies over the use of inherently limited profits, as private-sector unions do.

Moreover, when government unions strike, it imposes undeserved hardship on the American people, the people we serve, allegedly, by depriving basic public services they expect and they paid for in their taxes from State or local government.

It is for these reasons that, historically, lawmakers on both ends of the spectrum have steered clear of instituting collective bargaining in government. Even President Franklin Delano Roosevelt and George Meany, former president of the AFL–CIO, opposed collective bargaining in government. That is historic.

Imposing collective bargaining on State and local governments will likely result in a massive unfunded mandate on taxpayers.

Congress should therefore appropriately leave these decisions to States, as our predecessors have done.

Not only do these bills undermine our Nation's system of federalism, they are another attempt by committee Democrats to advance union special interests at the expense of workers. Democrats' top labor priority is H.R. 2474, the Protecting the Right to Organize Act, or the PRO Act, which deprives private-sector workers of important workplace rights while giving labor unions almost unlimited power to impose economic harm on unsuspecting businesses.

I bring up H.R. 2474 not only to demonstrate where committee Democrats' priorities lie, I believe, but also to show that the goal of the Democrats is to promote forced unionization throughout both the public and private sectors.

Exactly 1 year ago, the Supreme Court in Janus v. AFSCME ruled that no public employee should be forced to pay union dues as a condition of employment. I believe they ruled constitutionally. Forced dues in government are particularly egregious because collective bargaining impacts public policy and is, thus, inherently political speech.

Rather than undermine these rights for public-and private-sector workers alike, this committee should focus on issues where we actually have jurisdiction, including protecting the rights of workers covered by the National Labor Relations Act.

Private-sector workers should be allowed to make workplace decisions for themselves, like the choice to join and pay a union or not, share personal information with a union organizer, or vote for a union in a secret ballot election. At the same time, States should be free to determine public employee labor laws for themselves without needless intervention from the Federal Government.

This I believe strongly, and this, Madam Chairwoman, we will debate today. It is a good debate.

And I thank you for allowing me this opportunity, and I yield back.

[The statement of Mr. Walberg follows:]

Prepared Statement of Hon. Tim Walberg, Ranking Member, Subcommittee on Health, Employment, Labor, and Pensions

Thank you for yielding.

The two pieces of legislation we're here to discuss today are another Democrat attempt to put the thumb on the scale in favor of forced unionization and they also show no regard for the system of federalism on which this Nation was founded.

H.R. 1154, the Public Safety Employer-Employee Cooperation Act, and the Public Service Freedom to Negotiate Act disregard the will of the voters in every State by imposing a one-size-fits-all labor relations mandate enforced by Federal bureaucrats in Washington. If there's one thing this country doesn't need, it's more Federal overreach. We can be better than that, and as policymakers, shame on us if we're not.

The founding fathers spent countless, critical hours in debate, deliberating a system of checks and balances that would ensure that individual States were not unreasonably controlled by the Federal Government. Today, States have legitimate concerns with public sector collective bargaining, which is why even union-dominated States place some limitations on the practice. Rather than impose its will on individual States, Congress should respect these differences of opinion among the States and allow them to remain "laboratories of democracy" in determining their own public employee labor laws.

We should all know by now that government unions create perverse incentives that do not exist in the private sector. Government unions are an enormously powerful political force. While all Americans are free to join together and engage in the

political process, government unions can essentially elect their own employer in other words, Governors and State and local lawmakers with whom they negotiate collective bargaining agreements. These practices often force exorbitant, seemingly unlimited costs onto taxpayers, an unfortunate circumstance which is markedly different than negotiating with companies over the use of inherently limited profits, as private-sector unions do. Moreover, when government unions strike, it imposes undeserved hardship on the American people by depriving basic public services they expect from their State or local government.

It is for these reasons that historically, lawmakers on both ends of the spectrum have steered clear of instituting collective bargaining in government. Even President Franklin Roosevelt and George Meany, former president of the AFL–CIO, opposed collective bargaining in government.

Imposing collective bargaining on State and local governments will likely result in a massive unfunded mandate on taxpayers. Congress should therefore appropriately leave these decisions to States as our predecessors have done.

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Rather than undermine these rights for public and private sector workers alike, this Committee should focus on issues where we actually have jurisdiction, including protecting the rights of workers covered by the National Labor Relations Act. Private sector workers should be allowed to make workplace decisions for themselves, like the choice to join and pay a union or not, share personal information with a union organizer, or vote for a union in a secret ballot election. At the same time, States should be free to determine public-employee labor laws for themselves, without needless intervention from the Federal Government.

Thank you, I yield back.

Chairwoman WILSON. Without objection, all other members who wish to insert written statements into the record may do so by submitting them to the committee clerk electronically in Microsoft Word format by 5 o'clock p.m. on July 9, 2019.

I will now introduce the witnesses.

Ms. Tina Whitaker—Ms. Tina—is a social studies teacher from Miami, Florida. I am so pleased to see Ms. Tina Whitaker on today's panel because she is a current public school teacher in Miami-Dade County, my hometown, and a member of the United Teachers of Dade. I was glad she was able to accept my invitation to testify today.

I also want to welcome Ms. Karla Hernandez, who is the president of the United Teachers of Dade County. She is with us in the audience.

Our next witness is Dr. Joseph Slater. He is the Eugene N. Balk Professor of Law and Values at the University of Toledo School of Law.

Welcome.

Mr. Bob Onder is a State senator from Missouri, representing Missouri's District Two.

Thank you for coming.

Mr. Tom Brewer is the president of the Professional Fire Fighters and Paramedics of North Carolina in Charlotte, North Carolina.

Mr. Brewer, thank you.

Mr. William Messenger is an attorney with the National Right to Work Legal Defense Foundation in Springfield, Virginia.

Welcome.

Mr. Teague Paterson is a deputy general counsel of the American Federation of State, County, and Municipal Employees in Washington, DC.

Thank you for coming.

We really appreciate all of the witnesses for being here today, and we look forward to your testimony.

Let me remind the witnesses that we have read your written statements and they will appear in full in the hearing record. Pursuant to committee rule and committee practice, each of you is asked to limit your oral presentation to a 5-minute summary of your written statement.

Let me also remind the witnesses that, pursuant to title 18 of the U.S. Code, section 101, it is illegal to knowingly and willfully falsify any statement, representation, writing, document, or material fact presented to Congress or otherwise conceal or cover up a material fact.

Before you begin your testimony, please remember to press the button on the microphone in front of you so that it will turn on and the members can hear you.

As you begin to speak, the light in front of you will turn green. After 4 minutes, the light will then turn yellow to signal that you have 1 minute remaining. When the light turns red, your 5 minutes have expired, and we ask that you please wrap it up so I won't have to gavel you, because I will.

We will let the entire panel make their presentations before we move to member questions.

Remember, when answering a question, please remember to once again turn your microphone on.

I will first recognize Ms. Whitaker.

STATEMENT OF TINA Y. WHITAKER, UNITED TEACHERS OF DADE, HOMESTEAD, FLORIDA

Ms. WHITAKER. Good morning, Chairman Scott and Ranking Member Foxx. I would like to thank Chairwoman Wilson and Ranking Member Walberg for the opportunity to testify before this subcommittee.

My name is Tina Whitaker. I am a veteran teacher of 21 years in Miami-Dade County public schools, Florida, and a proud member of United Teachers of Dade. I teach social studies at Arthur & Polly Mays 6-through–12 Conservatory of the Arts.

I began my teaching career in May 1995 as a substitute teacher in Scotland Neck, North Carolina, at Brawley Middle School. Scotland Neck is in Halifax County, North Carolina, and is currently ranked 90th in per capita income in the State. I was excited not only was I giving back to the community in which I was raised, but I had the opportunity to work with teachers who had nurtured me as a student.

At the beginning of the following school year, I began teaching North Carolina history and language arts to seventh-graders. Still excited, I decorated my class for the new adventure with the help of those same teachers who were now my mentors.

After the completion of a successful year, unfortunately, I was released from my teaching duties because I was told that I had not fulfilled my obligation of getting my certification within 2 years of employment. A month of being a substitute teacher and 1 full year does not calculate to working for 2 years, but I had no one to advocate on my behalf since there was not a union I could belong to in North Carolina. I realized that I would have to navigate those waters alone.

I drove to Raleigh, North Carolina, and pleaded my case to the North Carolina Department of Education. With hope in my heart, I proceeded to go back to the human resources department at the Halifax County School Board. I had no one to advocate on my behalf. I had no union, no professional organization that could fight for me.

Here I was, a product of the community and the county school system who had beat the odds, but could not get anyone to listen to my pleas. I wanted the students that lived in my community to see that you can go off to college, get your degree, and come back home and serve the community in which you lived. I went from sadness and embarrassment to anger. I was angry because I was let go unfairly and those who could help me did not.

I was able eventually to find an educational lawyer that took my case pro bono. Months later, I moved to Miami, Florida, and started the process of gaining employment as a substitute teacher and eventually an educator in Miami-Dade County Public Schools system.

From my experiences in North Carolina, I learned what happens when you don't have someone to advocate for you. Therefore, I did not hesitate to join UTD after I became a teacher. This union has helped me reach my full potential. After coming from a place where my dreams were stifled and where I was unable to help my community, I found my voice in Miami because of a union that has helped me not only become a better educator but a better professional.

UTD has afforded me opportunities that I otherwise would not have had. The PD I have taken part in has given me tools provided that I was chosen as Teacher of the Year and Social Studies Teacher of the Year.

We are not just a union within the walls of our school building. We participate in advocacy and activism.

With all that we do in our community, we have still had to organize to combat bad legislation that adversely affects our students and our work force. Yes, bad legislation does trickle down into our classrooms. When bad legislation is passed, it affects the morale and district funding which provide for smaller classes, more mental and educational services, and teacher salaries.

You must walk your talk. Your message must be one of bringing togetherness in our communities. Healthy work forces and bargaining capability build strong and active communities, and strong communities build stronger economies.

I am Tina Whitaker, and as a proud public school teacher and union member, I want public school teachers around the country to have a right to collectively bargain. I hope that Congress will soon pass this important legislation.

Again, thank you for this opportunity, and I look forward to answering your questions.

[The statement of Ms. Whitaker follows:]

Testimony of Tina Whitaker

United Teachers of Dade,

American Federation of Teachers, Local 01974-0

Before the House Education and Labor Committee

"STANDING WITH PUBLIC SERVANTS: PROTECTING THE RIGHTS TO ORGANIZE"

June 26, 2019

Good morning, Chairman Scott and Ranking Member Foxx. I would like to thank Chairwoman Wilson and Ranking Member Walberg for the opportunity to testify before this subcommittee. My name is Tina Whitaker. I am a veteran teacher of 21 years in Miami Dade County Public Schools in Florida, and a proud union member of the United Teachers of Dade. I teach social studies at Arthur and Polly Mays 6-12 Conservatory of the Arts.

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anger. I was angry because I was let go unfairly, and those who could have helped me, didn't. I was able to find an education lawyer who took my case pro bono.

Months later, I moved to Miami and started the process of gaining employment as a substitute teacher and eventually as an educator with Miami Dade County Public Schools. From my experiences in North Carolina, I had learned what happens when you don't have someone to advocate for you, therefore I did not hesitate to join the United Teachers of Dade once I became a teacher. This union has helped me reach my full potential. After coming from a place where my dreams were stifled and where I was unable to help my community, I found my voice in Miami because of a union that has helped me become not only a better educator, but a better professional.

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Yes, bad legislation trickled down into our classrooms.

When bad legislation is passed, it affects morale and district funding that could provide for smaller classes, more mental health services, education services and teacher salaries. This bad legislation has caused our union to seek other means of giving education professionals a partial solution to a reasonable living wage.

You must walk your talk. Your message must be one of bringing togetherness in our communities. Healthy workforces with bargaining capability build strong and active communities, and strong communities build stronger economies.

I am Tina Whitaker, and as a proud public school teacher and a proud union member, I want public school teachers around the country to have the right to collectively bargain. It is my hope that Congress will soon pass this important legislation. Again, thank you for this opportunity, and I look forward to answering your questions.

Chairwoman WILSON. Thank you so much, Ms. Whitaker.
We will now recognize Dr. Slater.

STATEMENT OF JOSEPH SLATER, J.D., PH.D., EUGENE N. BALK PROFESSOR OF LAW AND VALUES AND DISTINGUISHED UNIVERSITY PROFESSOR, UNIVERSITY OF TOLEDO, TOLEDO, OHIO

Mr. SLATER. Madam Chair Wilson, Ranking Member Walberg, and members of the committee, thank you for the opportunity to testify today.

My name is Joseph Slater. I am a distinguished university professor at the University of Toledo. And I am here to give some background about how public-sector labor laws work and have worked in the U.S. and explain why I support the Public Service Freedom to Negotiate Act and the Public Safety Employer-Employee Cooperation Act.

First, the U.S. is very different than other comparable countries. In other industrialized nations, public-sector unions and private-sector unions have essentially the same rights. In the U.S., while private-sector workers won the right to bargain collectively in 1935 with the National Labor Relations Act, public-sector unions did not begin to win collective bargaining rights until the 1960's. And, even today, 8 States do not permit any public employees to bargain collectively, and about another 12 States only allow 1 to 2 types of public employees to bargain collectively. Meanwhile, international law views collective bargaining as a fundamental human right.

Second, public-sector labor law is out of step with other employment laws in the U.S. Many employment laws, many Federal employment laws, in the U.S. cover public employees as well as private employees. The wages and working conditions of public employees affect commerce, which is why Congress has the power, for example, to apply the Fair Labor Standards Act to public employees as well as private employees.

Third, objections to public-sector collective bargaining have been largely disproven by experience. One old objection was that public officials would, for political reasons, cave to union demands. Experience has shown that is not true. This is partly because there are strong political pressures to the contrary. The general public wants good public services, but it also wants low costs for those services, and at the voting booth the general public tends to swamp public employees. There are also powerful and well-funded groups opposing public employee interests, such as anti-tax groups and anti-union groups. Meanwhile, public employees have legitimate interests as employees, just as private employees do, that need protection.

Further, public-sector collective bargaining rights generally do not have any significant negative impact on public budgets. Public employees are not overpaid compared to comparable private-sector workers. The vast majority of studies on the issue have shown that, if anything, public employees are paid somewhat less than their comparable private-sector counterparts.

Relatedly, there is no correlation between State budget deficits in States that grant collective bargaining rights to public employees. Researchers from UC-Berkeley found, quote, "no statistically sig-

nificant correlation between union density, union strength, and the size of State budgets." As Congressman Mike Quigley once observed, States allowing public-sector collective bargaining, on average, have a 14 percent budget deficit, while States that bar collective bargaining have, on average, a 16.5 percent deficit.

Fourth, public-sector collective bargaining laws do a lot of good. They promote labor peace, reducing the number of illegal public-sector strikes. When my State of Ohio passed its public-sector law in the early 1980's, the number of strikes in the public-sector decreased dramatically. This was despite the fact that the Ohio law not only allowed collective bargaining rights for public employees but it allowed some public employees to strike under some circumstances. But yet the number of strikes went down. The same thing happened when Illinois passed its collective bargaining law in the 1980's.

The reason this happens is because given bargaining rights to workers and effective alternatives to strikes means workers don't have to use illegal strikes as their only option to address their concerns. Indeed, a leading study found that public-sector strikes were most likely to occur in States that did not allow collective bargaining for public employees. For example, the teachers' strikes in 2018 took place in six States, none of which permitted collective bargaining by teachers.

Fifth, collective bargaining rights help with retention and recruitment of employees. We should encourage talented people to go into the public service and stay there. Opponents of collective bargaining rights of unions often make arguments about corporate executive pay along the lines of, well, you need to pay these people a lot of money to get good people in the jobs and keep them there. Well, that is also true; we need to have good pay and benefits if we want talented people in the public service, if we want good teachers, firefighters, and police officers.

Sixth, a number of studies show that unions increase efficiency and productivity. This is because union members know how to do their jobs. A series of studies demonstrate that.

Finally, unions help the economy as a whole, in part because they help bolster the middle class. Collective bargaining has historically served to increase consumer purchasing power, assure a voice in the work force, and provide checks and balances in society.

For these reasons, I support the Public Service Freedom to Negotiate Act.

Thank you very much.

[The statement of Mr. Slater follows:]

House Committee on Education and Labor Hearing

"Standing with Public Servants: Protecting the Right to Organize"

Full Testimony of Professor Joseph Slater

Madame Chair Wilson, Ranking Member Walberg and Members of the Committee, thank you for the opportunity to testify today. My name is Joseph Slater. I am the Eugene N. Balk Professor of Law and Values at the University of Toledo College of Law, and a Distinguished University Professor at the University of Toledo. I'm here to give some background and context about public-sector labor law in the U.S., and to explain why I am in favor of the Public Service Freedom to Negotiate Act and the Public Safety Employer-Employee Cooperation Act.

First, this is a very important area of law. Currently, public employees are nearly half of all unionized employees in the U.S.

Second, the U.S. is very different than other, comparable countries in that public-sector labor law here has developed differently than private-sector labor law. While most private-sector workers won the right to bargain collectively in 1935 with the National Labor Relations Act, public employees did not begin to win collective bargaining rights until the 1960s and later. Even today, eight U.S. states do not permit any public employees to bargain collectively, and about a dozen more only let one-to-four types of public employees bargain collective. In European and other comparable, industrialized nations, the rights of public and private sector workers are much more similar. But the U.S. has a patchwork of laws governing public-sector unions that vary tremendously state-to-state. I know of no other area of law which varies as much state to state as public-sector labor law does. This is not of private-sector labor law, which is governed by federal law.

Relatedly, the U.S. does not follow international law in this area. International law recognizes collective bargaining as a fundamental human right. Both Article 23 of the United Nations' Universal Declaration of Human Rights and the 1998 International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work emphasize the significance of collective-bargaining rights for all employees, including government workers.[1] Both Human Rights Watch and Amnesty International have stated that U.S. law in this area in some states violate international human rights standards.[2] In 2007, the International Labor Organization called on North Carolina to repeal its statutory ban on all collective bargaining in the public sector in that state.[3]

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1. *ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up*, INTERNATIONAL LABOR ORGANIZATION (1998), *available at* http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm; *Universal Declaration of Human Rights*, 217 A (III), U.N. GENERAL ASSEMBLY (Dec. 10, 1948), *available at* http://www.unhcr.org/refworld/docid/3ae6b3712c.html.

2. Michelle Amber, *Collective Bargaining: Human Rights Groups Say State Measures on Workers' Rights Violate International Law*, 49 GOV'T EMP. REL. REP. 438 (2011).

[3] MARTIN MALIN, ANNE HODGES, JOSEPH SLATER, AND JEFFREY HIRSCH, PUBLIC SECTOR EMPLOYMENT (West, 3d ed. 2016)p. 418; *see* http://southernworker.org/wp-content/uploads/downloads/2013/08/ILO-Decision-on-US-and-North-Carolina.pdf containing the decision in Case No. 2460, Complaint against the Government of the United States by the United Electrical, Radio, and Machine Workers

Labor law is out of step with other forms of employment law in the U.S. Most of the major federal employment laws cover public employees as well as private employees. Of course the wages and working conditions of public employees affect commerce just as private employees do, which is why Congress had the power under the Commerce Clause to apply statutes like Title VII, the Fair Labor Standards, Act, the Americans with Disabilities Act, and other federal employment laws to state and local government employees. The idea that it is good policy to have public employees have the same types of protections as private employees has been well-established in the U.S. for over half a century.

Third, objections to public sector collective bargaining have been largely disproven by experience. One old objection was that public officials would, for political reasons, capitulate to union demands. But it is clear that public officials generally do *not* simply cave to union demands. That's because there are strong political pressures to the contrary. We know that the general public wants both high levels of public service *and* low costs for those services. We also know that at the voting booth, the general public vastly outnumbers public employees. Groups dedicated to reducing taxes and to limiting public-sector union rights are powerful. Meanwhile, public employees have legitimate interests *as employees* that deserve protection through collective bargaining just as in the private sector.

Further, public-sector collective bargaining rights generally don't have any significant, negative impacts on public budgets. Public employees are not overpaid, compared to comparable private sector workers. The vast majority of studies on the topic have concluded that public employees are, on the whole, paid less (including benefits) than comparable private sector workers. Public employees in lower-paid jobs are sometimes paid more than similar private-sector employees, but public employees in higher-paid jobs are paid less.

For example, one study concluded:

> Wages and salaries of state and local employees are lower than those for private sector workers with comparable earnings determinants (e.g., education). State employees typically earn 11 percent less; local workers earn 12 percent less. ... Over the last 20 years, the earnings for state and local employees have generally declined relative to comparable private sector employees. ... [Including benefits] . . . total compensation is 6.8 percent lower for state employees and 7.4 percent lower for local workers, compared with comparable private sector employees.[4]

Another found that, after controlling for education, experience, hours of work, and other relevant factors, "[F]ull-time state and local employees are, on average, undercompensated by 5.6%."[5]

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[4] Keith Bender & John Heywood, Out of Balance? Comparing Public and Private Compensation over 20 Years (National Institute on Retirement Security 2010), *available at* http://www.nirsonline.org/storage/nirs/documents/final_out_of_balance_report_ april_2010.pdf.*

[5] Jeffrey Keefe, *State and Local Public Employees: Are They Overcompensated?* 27 A.B.A.J. LAB.

To the extent problems exist in public employee compensation, they mostly relate to formulas for pension benefits; and, crucially, under existing laws, public employees in the vast majority of jurisdictions are not permitted to negotiate about pension benefits. [6] Pension benefits can be dealt with separately. Between 2010 and 2012, 41 states enacted significant changes to at least one of their statewide retirement plans, mostly cutting benefits, increasing employee contributions, or both. This was all entirely independent of collective bargaining rights.

For these reasons, not surprisingly, there is no significant correlation between state budget deficits and collective bargaining rights for public employees. Researchers from U-C Berkeley found "no statistically significant correlation between union density, union strength, and the size of state budgets."[7] As Congressman Mike Quigley (D-Ill.) has observed, states allowing public-sector collective bargaining, on average, have a 14% budget deficit, while states that bar collective bargaining have, on average, a 16.5% deficit.[8] Many states with high budget deficits bar public-sector collective bargaining, many states that permit public sector bargaining have low state deficits, including my state of Ohio.

Fourth, public-sector collective bargaining laws do a lot of good. They promote labor peace, reducing the number of illegal public-sector strikes. When the Ohio public-sector law was passed, the number of public-sector strikes decreased dramatically, even though the law actually allowed for some public employees to strike in some circumstances, and the previous law made all strikes illegal. The same thing happened in Illinois when it passed its law granting collective bargaining rights to public employees. Giving realistic bargaining rights to workers and effective alternatives to strikes means workers don't have illegal strikes as their only option. One study found that public-sector strikes were most likely to occur in states without collective bargaining rights.[9]

It is worth noting here that teachers' strikes in 2018 took place in states that did not permit collective bargaining by teachers: West Virginia, Oklahoma, North Carolina, Tennessee, Colorado, and Kentucky.

Further, collective bargaining rights help with retention and recruitment of employees. It is good public policy to encourage talented and skilled people to go into teaching, policing, firefighting, and other public jobs. It is good policy to try to retain such employees. Opponents of union rights frequently argue that executives, managers, and other higher-level employees in

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& EMP. L. 239 (2012).

[6] *See* Joseph Slater & Elijah Welenc, *Are Public-Sector Employees "Overpaid" Relative to Private-Sector Employees? An Overview of the Studies*, 52 WASHBURN L.J. 533 (2013).

7. Sylvia Allegretto et al., *The Wrong Target: Public Sector Unions and State Budget Deficits*, INST. FOR RES. ON LAB. & EMP (Univ. of Cal., Berkley), Oct. 2011, at 9, http://www.irle.berkeley.edu/research/state_budget_deficits_oct2011.pdf.

8. *State Employees: House Panel Debates State Budget Problems, Whether Bargaining Rights Need to Be Cut*, 25 BUREAU OF NAT'L AFFAIRS LAB. REL. WK. 700 (2011).

9. David Lewin et al., *Getting It Right: Empirical Evidence and Policy Implications from Research on Public-Sector Unionism and Collective Bargaining* 13-14 (Emp't Pol'y Research Network & Labor & Emp't Relations Ass'n, 2011), *available at* http://ssrn.com/abstract=1792942.

deserve high pay because of recruitment and retention concerns. This is also true if policymakers want good teachers, firefighters, police officers and an efficient public service.

Also, unions can often improve efficiency. For example, evidence shows that unionization of teachers correlates positively with higher student scores on standardized tests and higher graduation rates.[10] More generally, the literature on unions and efficiency indicates that unions can often have a positive effect. One survey explained that there "is scant evidence that unions act to reduce productivity ... while there is substantial evidence that unions act to improve productivity in many industries."[11] Another survey noted that "[a]nalyses of the union effect on firms and the economy have generally found unions to be a positive force, improving the performance of firms and contributing to economic growth."[12]

Public-sector unions and employers have often worked together to improve efficiency, because workers understand the nature of their jobs.[13] In my state of Ohio, teachers' unions have negotiated to shrink or maintain class sizes—without unions, school districts sometimes try to save money by increasing class sizes. The Cleveland Teachers' Union negotiated an "In-School Suspension" program that keeps students off the streets and helps give appropriate treatment to troubled students. Unions also help improve the curriculum by negotiating for additional class offerings, including foreign languages in high schools and music, art, and physical education classes in elementary schools. The Toledo Federation of Teachers created the Peer Assistance and Review (PAR) program that allows the union and management to decide when teachers are struggling, and pair them with veteran teacher mentors to provide guidance and evaluation. More than 70 school districts around the country have adopted the PAR program, and it is widely known as one of the best systems for improving new teacher quality.[14]

Other unions also bargain for measures that benefit the public. Firefighter and police unions have bargained to maintain safe staffing levels with sufficient personnel for effective response times.[15] Transit workers in Portland, Oregon joined with an organization of passengers, Bus Riders Unite, to advocate for better safety measures that would benefit both riders and drivers.[16] Unions in the federal sector and elsewhere have engaged in labor-management cooperation groups that have had many positive effects. For example, a partnership between the Defense Distribution Depot and AFGE Local 1546 saved $950,000 per year by reducing

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10. *See generally* Robert M. Carini et al., *Do Teacher Unions Hinder Educational Performance? Lessons Learned from State SAT and ACT Scores*, 70 HARV. EDUC. REV. 437 (2000).
11. Dale Belman & Richard Block, *The Impact of Collective Bargaining on Competitiveness and Employment: A Review of the Literature*, *in* BARGAINING FOR COMPETITIVENESS: LAW, RESEARCH, AND CASE STUDIES 45, 51 (2003).
12. LAWRENCE MISHEL & MATTHEW WALTERS, ECON. POL'Y INST., HOW UNIONS HELP ALL WORKERS 15 (Briefing Paper No. 143, Aug. 26, 2003), *available at* http://www.epinet.org/content.cfm/briefingpapers_bp143.
13. *See generally, e.g.*, PUBLIC SECTOR EMPLOYMENT IN A TIME OF TRANSITION (Dale Belman et al. eds., 1997) (collecting "best practices" in public-sector labor relations).
14. Philip Stevens, *Benefits of Bargaining: How Public Sector Negotiations Improve Ohio Communities*, POLICY MATTERS OHIO 8 (Oct. 2011), *available at* http://www.policymattersohio.org/wp-content/uploads/2011/10/benefitsofbargaining_2011_1010.pdf.
15. *Id.* at 15.
16 Alexandra Bradbury, *Making Buses Safer*, LABOR NOTES, Aug. 1, 2017. http://labornotes.org/blogs/2017/08/making-buses-safer.

workplace accidents by 20%, ergonomic injuries by 40%, reducing overtime and reducing production costs.[17]

Finally, unions can help the economy as a whole, in part because they help bolster the middle class. A study by labor relations experts explained, "Collective bargaining has historically served to increase consumer purchasing power, assure voice in the workplace, and provide checks and balances in society."[18] Another study explicitly linked increased wage inequality with the decline of unions.[19]

In sum, the Public Service Freedom to Negotiate Act and the Public Safety Employer-Employee Cooperation Act will set reasonable, minimal standards for public workers that will give all public employee similar bargaining rights as private sector workers and public sector workers in most states already enjoy. The FLRA will be authorized to determine whether states already meet those minimum standards, and if the state does – which most states will – the law will make no change. In the minority of states that do not meet this standards, this law will bring the U.S. into conformity with the rest of the U.S. and with comparable countries by providing the right to bargain collectively, with realistic means to resolve bargaining impasses. This will contribute to labor peace, provide stability in employment, and will provide voice and opportunities to the millions of people who help governments across the country provide services to the American people.

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[17] U.S. OFFICE OF PERSONNEL MGMT., LABOR-MANAGEMENT PARTNERSHIP: A REPORT TO THE PRESIDENT (2000).
18. Lewin et al., 3.
19. Bruce Western & Jake Rosenfeld, *Unions, Norms, and the Rise in American Wage Inequality*, 76 AM. SOC. REV. 513, 514, 528 (2011).

Chairwoman WILSON. Thank you, Dr. Slater.

We will now recognize Mr. Onder, our State senator.

STATEMENT OF THE HONORABLE ROBERT F. ONDER, M.D., STATE SENATOR, MISSOURI GENERAL ASSEMBLY, JEFFERSON CITY, MISSOURI

Dr. ONDER. Thank you.

Chairwoman Wilson, Ranking Member Walberg, members of the committee, for the record, I am Bob Onder, State senator representing Missouri's Second Senatorial District. Thank you for the opportunity to testify today.

I was elected to the Missouri Senate in 2014, and, since then, I have chaired the committee that has handled most of Missouri's labor bills, including Missouri's Government Worker Protection Act, House Bill 1413, a comprehensive labor reform bill signed into law last year.

Today, I appear before you to testify in favor of the rights of States and their political subdivisions to set their own public-sector labor policies, and, as such, I testify in opposition to the two bills before you today.

Private-sector collective bargaining has been governed by Federal law since President Franklin Roosevelt signed the Wagner Act in 1935. Congress has long recognized the distinction between public-sector collective bargaining and the private sector and has allowed States and local governments, accordingly, to set their own laws, their own policies in the latter.

FDR himself recognized this distinction when he Stated, "All government employees should recognize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service."

It is important to recognize, as did your predecessors, the fundamental differences between government and private-sector unions.

In the private sector, employers are private companies or individuals. Government and, by extension, the people are the employers of public-sector employees.

Government unions through aggressive political activity often end up electing their own bosses, potentially leading to conflicts between the interests of citizens and taxpayers and that of the unions.

In the private sector, there are natural checks and balances on the power of unions. If union demands make a company uncompetitive, everyone suffers. Witness the U.S. auto industry. These checks and balances are lacking with government unions.

If we look at States with the worst fiscal conditions and the highest taxes, such as Illinois, New Jersey, Connecticut, what they all have in common is very strong government unions.

I believe that if there is one thing we can agree on here, it is that different States have very different approaches to labor policies—for example, whether collective bargaining is allowed for police, firefighters, and teachers. Most allow it. Some mandate it, some ban it, and some allow it to be decided at the local level. And whether these workers should be allowed to strike.

These varying policies have evolved over decades. Missouri has allowed public-sector collective bargaining since 1965. And since

then, policy has been modified from time to time by statute, by decisions of two government agencies, and by hundreds of political subdivisions.

Congress has no business centralizing all of this power in the Federal Labor Relations Authority. It would be an enormous Federal overreach and a violation of the principle of federalism to do so. And it would also require a massive expansion of the Federal Labor Relations Authority to micromanage labor policy in 50 States and thousands of political subdivision across our country.

Finally, Federalization of public-sector labor law would preclude reform measures that protect both workers and taxpayers. Examples of such reforms include the provisions of House Bill 1413 passed in Missouri last year. With this bill, we codified the certification process; we gave workers the right to vote every 3 years as to whether they wanted to continue to be represented by a union; gave the workers the right to annually opt in or out of financial payment to unions; and promoted financial transparency similar to Federal LM reporting. These protections would be nullified by Federal legislation.

Alexander Hamilton wrote in Federalist No. 9 that the proposed Constitution "leaves to States' possession certain exclusive and very important portions of sovereign power." Our current system of State control of public-sector labor relations allows States to use that sovereign power to balance the interests of public employees and unions, citizens, and taxpayers.

I urge this committee to reject Federal takeover of these very important State functions.

Thank you.

[The statement of Dr. Onder follows:]

"Standing with Public Servants: Protecting the Right to Organize"
House Committee on Education and Labor
Subcommittee on Health, Employment, Labor, and Pensions
Robert F. Onder, M.D., J.D.
Missouri Senate, District 2
June 26, 2019

Madam Chairwoman, Ranking Member Walberg, Members of the Committee, for the record I am Bob Onder, State Senator from Missouri's Second District. Thank you for the opportunity to testify today.

I was elected to the Missouri Senate in 2014, and in 2017 and 2018 I chaired the Senate General Laws Committee, which handled all of Senate's labor bills. I was the author and senate sponsor of HB 1413, Missouri's comprehensive public sector labor reform bill that was passed and signed into law last year.

Today I appear to testify in favor of the right of states and their political subdivisions to set their own public labor policies, and as such I testify in opposition to the two bills being discussed today.

Private sector collective bargaining has been governed by federal law since the National Labor Relations Act was signed by President Roosevelt in 1935. Congress has long recognized that public sector collective bargaining is fundamentally different than that in the private sector, and as such has allowed states and local governments to set their own labor policies. FDR himself recognized this distinction when he stated, "All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service."

It is important to recognize, as did your predecessors, that government unions are fundamentally different than private sector unions. In the private sector employers are private companies; government, and by extension, the people, are the employers in the public sector. Government unions, through their aggressive political activity, often end up electing their own bosses, potentially leading to conflict between the interests of citizens and taxpayers and that of the unions. In the private sector there are natural checks and balances on the power of unions; if union demands make a company uncompetitive, everyone suffers; witness the US auto industry.

Government, on the other hand, just tends to grow and grow. If we look at states with the worst fiscal conditions and the highest taxes — such as Illinois, New Jersey, Connecticut— what they have in common is very strong government unions.

If there is one thing that everyone in this room can agree on it is that different states take very different approaches to labor policy. The majority of states allow firefighters, police and teachers to collectively bargain. Some mandate it. Others ban it. Other states have no set law on the matter and allow political subdivisions to work out their own policies. The great majority of states ban strikes for firefighters, police, and teachers. But two states allow firefighters and police to strike, and twelve allow teachers to strike.

These varying policies often evolved over decades of legislation and litigation at the state level. Missouri has allowed public sector collective bargaining since 1965, and since then policy has been made by statutes passed by legislature, by regulations promulgated by the state Department of Labor and the Board of Mediation, and by the decisions of hundreds of cities, counties, school and fire boards, and other political subdivisions across the state. Congress has no business centralizing all of this state and local decision making in the Federal Labor Relations Authority. This would be an enormous overreach by the federal government and a violation of the principle of federalism. And it would require a massive expansion of the Federal Labor Relations Authority to micromanage nearly every aspect of state and local labor policy.

Finally, federalization of public sector labor law would likely preclude reform efforts by states to protect both workers and taxpayers. Examples of such reforms include provisions of Missouri's Government Worker Protection Act, HB 1413, which was signed into law last year. With this bill we codified the certification process, gave workers the right to vote every three years as to whether they wanted to continue to be represented by a government union or choose a different union, gave workers the right to annually opt in or out of union dues withholding, and promoted financial transparency by requiring unions to report their finances, similar to federal LM reporting for private sector unions. Protections such as these could be preempted and nullified by federal legislation and regulation.

Alexander Hamilton wrote in Federalist 9 that the proposed Constitution "leaves in the states' possession certain exclusive and very important portions of sovereign power." Our current system of state control of public sector labor relations allows states to use their sovereign power to balance the interests of public employees, government unions, citizens, and taxpayers. I urge this committee to reject the federal takeover of this state function.

Thank you.

Chairwoman WILSON. Thank you, Mr. Onder.
We will now recognize Mr. Brewer.

STATEMENT OF TOM BREWER, PRESIDENT, CHARLOTTE NORTH CAROLINA FIRE FIGHTERS LOCAL 660 AND NORTH CAROLINA FIREFIGHTERS' ASSOCIATION, MOORESVILLE, NORTH CAROLINA

Mr. BREWER. Good morning, Chairwoman Wilson, Ranking Member Walberg, and distinguished members of the subcommittee. My name is Tom Brewer, and I am the president of the Professional Fire Fighters and Paramedics of North Carolina.

I appear before you today on behalf of the International Association of Fire Fighters, our general president, Harold Schaitberger, and the over 316,000 professional firefighters and emergency medical personnel who comprise our union.

I began my career in public service nearly 23 years ago, and today I serve the citizens of Charlotte, North Carolina, as a frontline firefighter and captain. I also serve as the president of my local union, IAFF Local 660. My coworkers and I strive every day to protect our community and its citizens.

At its core, the right to organize and collectively bargain is about establishing a mechanism to enable labor and management to work together for their mutual benefit.

In States and localities with strong laws, collective bargaining has produced measurable improvements in training, staffing, equipment, and health and safety, resulting in improved local emergency response capabilities, safer communities, and safer firefighters.

The people that we serve expect the very best from their firefighters, and we work hard every day to meet these expectations. But, many times, we are being asked to do our jobs with one hand tied behind our backs, because, even as highly trained experts, we cannot consistently convey basic workplace needs to our employers.

Today's fire service operates on multiple governmental levels. Firefighters regularly respond beyond their own jurisdictions to incidents involving hazardous materials, active shooters, wildland fires, and other local and national security threats, all of which can impact communities not just throughout a State but across a region.

Fire departments must work together in partnership to meet threats facing communities. Without an effective local response, homeland security is almost inevitably impaired. The Federal Government, therefore, has a responsibility to ensure that emergency response at the local level is as effective as possible.

As public-sector workers, we are banned in my home State from collective bargaining. This means we cannot meet with our employer in a good-faith structured exchange. Instead, we plead with our local governments to try and get what we need to do our jobs effectively.

As a result, both workers and communities experience inadequate protections. There are many communities in North Carolina where fire apparatus are dangerously understaffed. When responding to a fire, they must literally wait until a second apparatus arrives before engaging in suppression activities.

Understaffing also hinders responses to other incidents such as car accidents, where insufficient personnel slows extrication duties and lifesaving procedures such as CPR. This not only endangers firefighters but it puts citizens at risk.

Time and time again, firefighters in these communities have asked their city councils to increase staffing to meet these necessary safety standards, and time and time again they have been shut out. With collective bargaining, both parties would have a structured process that would allow for this necessary conversation to occur, helping fix this serious public safety problem.

Consider my hometown of Charlotte. For the past 20 years, we have pleaded with the city to provide us with firefighter physicals, including cancer screenings. Finally, after years of dead-end requests, the city relented, and this is the first year they are being administered. Had we been able to sit down with our employer and present our case, how many dollars and, more importantly, how many lives may have been saved?

Thankfully, there is a solution. The Public Safety Employer-Employee Cooperation Act will provide a basic set of collective bargaining rights for firefighters and other public safety workers while protecting the rights of States that currently provide these protections.

Collective bargaining is overwhelmingly used as a mechanism to enable labor and management to work together for their mutual benefit. The Cooperation Act represents a conversation between public safety employers and employees—a process, not an outcome.

Nowhere is this relationship more important than when lives and property are at stake. Having a voice in the workplace is a fundamental right for firefighters, just as the public has a fundamental right to rely on effective emergency services.

In conclusion, when workers have a meaningful role and effective voice in the decisionmaking process, everyone is better off: Firefighters are safer, and communities are safer.

Thank you, and I will be happy to answer any of your questions.

[The statement of Mr. Brewer follows:]

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Statement of

Mr. Tom Brewer
President
North Carolina State Fire Fighters Association
Charlotte, Fire Fighters Association, Local 660

on

"Standing with Public Servants: Protecting the Right to Organize"

Before the

Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and Labor
United States House of Representatives

June 26th, 2019

INTRODUCTION

Good morning Chairwoman Wilson, Ranking Member Walberg and distinguished members of the Subcommittee. Thank you for inviting me to testify about the importance of collective bargaining for fire fighters and emergency medical responders. My name is Tom Brewer and I am President of the Professional Fire Fighters and Paramedics Association of North Carolina. I appreciate the opportunity to appear before you today on behalf of the International Association of Fire Fighters, General President Harold Schaitberger, and the over 316,000 professional fire fighters and emergency medical personnel who comprise our union.

I would also like to thank Chairman Scott for his continued and strong commitment to the issue of organizing and collective bargaining within the labor community, specifically when it comes to public safety. He has always been someone that the fire service can count on to speak to the unique needs we face every day and so I would like to thank him for his efforts today.

I began my career in public service nearly 23 years ago. After graduating from college, I enlisted in the Air Force and served as a Crash and Rescue fire fighter from 1996 to 2000. During my service I was stationed at Shaw Air Force base in South Carolina and served a 6-month deployment in Doha, Qatar. Today I serve the city of Charlotte, North Carolina as a front-line fire fighter and Captain. I also serve as President of my local union, IAFF Local 660 in Charlotte. Every day I report to work at my local fire station, I never question my duty to the citizens of Charlotte. I took an oath, to protect the citizens of my community, a covenant to respond to each citizen and their families request for help. My coworkers and I work every day to protect the lives, health and safety of the citizens we serve. Unfortunately, because I work in North Carolina, I and my brothers and sisters in fire are legally prohibited from bargaining for the basic rights and benefits that are required to do our jobs safely and effectively. North Carolina expressly outlaws public sector collective bargaining and bars public agencies from entering into any sort of binding agreement with their employees. The right to collectively bargain for a contract honors and respects that covenant protecting our firefighters and their families.

I know firsthand what is at stake when workers are not given the opportunity to sit across the table from their employer and discuss the challenges they face on the job, and the resources they need to meet them. Thankfully, there is a solution. The Public Safety Employer-Employee Cooperation Act, HR 1154, introduced by Representatives Kildee (D-MI) and Fitzpatrick (R-PA) will provide a basic set of collective bargaining rights for fire fighters and other public safety workers while protecting the rights of states that currently provide these protections. Under this bill, workers like those in North Carolina will finally have a voice in how to strengthen local public safety and better serve their communities.

COLLECTIVE BARGAINING PROTECTS PUBLIC SAFETY WORKERS AND THE PUBLIC

Over the past two decades of my career, I have come to understand one fundamental aspect to the fire service. The men and women who choose this profession do not see it as an average day-to-day job. It's something much more than that, we see it as a calling. This perspective combined with the dangerous nature of the profession results in tremendous sacrifices. We make the sacrifice of family time to serve grueling 24-hour shifts. We make sacrifices in income and benefits to perform the jobs to which we were called. And yes, we sacrifice our health and sometimes even our lives in service to our communities and their citizens. When fire fighters are denied the right

to collectively bargain, when they are denied the right to sit at a table across from their employer and simply engage in dialogue, these sacrifices are severely undermined.

At its core, the right to organize and collectively bargain is about establishing a mechanism to enable labor and management to work together for their mutual benefit. In states and localities with strong collective bargaining laws, collective bargaining has produced measurable staffing, training, equipment and health and safety improvements, resulting in improved local emergency response capabilities, safer communities, and safer fire fighters.

Collective bargaining allows labor and management to join together and establish safe staffing standards so fire fighters can effectively respond to incidents, to set a safe work schedule allowing fire fighters to effectively manage the physical and mental demands of the job, and to establish health and safety precautions such as installing diesel exhaust systems or clearly established decontamination areas to keep fire fighters healthy and working.

Collective bargaining allows labor and management to join together and ensure fire fighters are well trained and equipped, to ensure sufficient apparatus and station coverage, and to establish professional certification standards for workers, all to ensure the community receives the best possible services.

The people that I serve expect the very best from their fire department, and we work hard every day to meet these expectations. But we are being asked to do our job with one hand tied behind our backs because even as highly trained experts, we cannot confidently and consistently convey basic workplace needs to our employers. Instead, decisions that should be made with both labor and management voices in the room are not. It is as if a fire broke out in a residential home or business and instead of the fire department showing up to do their job, members of the city council show up instead. Without the ability to collectively bargain, voices of the well-trained professional fire fighters, the ones that need to be heard, are being silenced.

EFFECTIVE LOCAL EMERGENCY RESPONSE IS KEY TO NATIONAL SECURITY

One very important and unique aspect of today's fire service is that it operates on multiple governmental levels. No longer is it the case where a fire fighter working in his or her town responds to incidents within the borders of that jurisdiction. Emergency responders regularly respond beyond their own jurisdictions to incidents involving hazardous materials, active shooters, biological and explosive threats, wildland fires, and other local and national security threats - all of which can impact communities not just throughout a state, but across a region.

This new reality illustrates how fire departments throughout states and regions must work together in partnership to meet the safety threats facing communities. The local fire department has evolved into a crucial component of our nation's national preparedness and response system and thus, the federal government has a vital interest in promoting cooperation and partnerships between public safety agencies and first responders. Without an effective local emergency response, homeland security is almost inevitably impaired. Therefore, the federal government has a responsibility to ensure that emergency response at the local level is as effective as possible. Enhancing cooperation between public safety employers and employees through the fundamental right to collectively bargain can help meet that responsibility.

HOW NORTH CAROLINA SUFFERS WITHOUT COLLECTIVE BARGAINING RIGHTS

In North Carolina, a 1959 law banned collective bargaining by public sector employees. For fire fighters, that means that instead of bargaining in good faith with their employer, wages, hours and working conditions are established by the legislature or local government. From a practical perspective, this means that even if employers and employees agree that direct negotiation would be mutually beneficial, fire fighters are forced to lobby elected officials on even the most basic issues. And because lawmakers regularly retire or are elected out of office, we are constantly educating newly-elected officials as to our needs and subject to ever-changing political perspectives.

This dynamic not only negatively impacts workers but impairs our ability to serve the public safely and effectively.

These concerns are not just theoretical. In Boone, North Carolina, fire apparatus is staffed with only two fire fighters. The National Fire Protection Association, which establishes voluntary consensus standards for the fire service, stipulates that fire apparatus should be staffed by a minimum of four personnel to ensure the highest level of safety for workers and the most effective response time for emergencies. Staffing an apparatus with two individuals, as does Boone, is dangerously inadequate and presents all sort of risks to an effective response, to the public, and to the responding fire fighters.

This is happening in places like Boone, North Carolina; fire fighters responding to a house fire cannot safely begin their work once on the scene until a second apparatus arrives, as a minimum of four fire fighters is required to safely and effectively respond to this type of situation. When responding to a car accident, Boone first responders are slower to administer extraction duties and lifesaving procedures such as CPR. Every study within the industry clearly and consistently shows that a four-person apparatus improves the ability to save lives and respond more quickly to emergencies.

This is also happening in Colington, North Carolina. Time and time again the fire fighters of Colington have asked their city council to increase staffing to meet these necessary safety standards, and time and time again they have been turned down, shut out. With collective bargaining, both parties would have a structured process that would allow for this necessary conversation to occur, helping to fix this serious public safety problem.

As another example, in my home of Charlotte, fire fighters have been advocating since 1996 for annual physicals. It should come as no surprise that fire fighters face extreme physical demands on the job, and those demands place our health at risk. Firefighters routinely operate in harsh work environments with excessive heat and smoke, toxic chemicals and extreme physical challenges. In addition to the potential for musculoskeletal injury, respiratory conditions and metabolic disorders, fire fighters are at higher risk for cardiovascular events such as heart attack or stroke, cancer, and mental health challenges.

Especially as it relates to cancer, the Charlotte Fire Department has not been immune to this brutal reality. In 2016 we had three fire fighters die of cancer over a three-month span. Between 2014 and March of 2017 our department has had 41 cancer cases from a pool of just over 1,100 young and healthy workers.

Cancer, cardiovascular disease and other disorders are best addressed when detected early. We know that early detection improves treatment options and outcomes and helps lower costs. This is where the inability to have a conversation with our employer truly impacts lives. For over twenty years, we were unable to convince the city to provide fire fighters with annual physicals. After a constant back-and-forth, education and quite frankly pleading with the powers that be, 2019 will be the first year our department has begun to implement department physicals. If we would have been able to sit down with our employer and present our case, in a structured setting, the benefits and justification for an annual physical, I ask how many hours, dollars and lives could have been saved?

I tell you these examples not just to demonstrate that the cities in question wasted time and taxpayer dollars. The more significant lesson is that politics is a poor substitute for collective bargaining.

The absence of collective bargaining in North Carolina also, unfortunately, negatively impacts our ability to recruit and retain well-trained and experienced fire fighters. In North Carolina, we regularly lose talented professional fire fighters, men and women we invested in training, to other states which provide a cooperative, and thus productive and protected working environment. This type of turnover not only wastes North Carolina resources, it has an unfortunate detrimental effect on local preparedness and response.

PUBLIC SAFETY COLLECTIVE BARGAINING WORKS

Although my fellow fire fighters and I are not protected by the benefits of collective bargaining, I know that it works. This is what makes public safety collective bargaining different from other occupations. The process emphasizes the worker's experience and related health and safety issues to improve the quality of emergency services. I've spoken to fire fighters across the country as a local and state leader, and I have heard firsthand how the ability to sit down with your employer results in safer and more effective work environment.

In Dearborn, Michigan for example, local fire fighters worked alongside city management for over a year through the collective bargaining process to resolve a dangerous understaffing situation resulting in daily brownouts. Fire fighters worked with management and mutually agreed to increase staffing on apparatus and hire 18 additional fire fighters. In exchange, management was able to secure an increase in work hours from 50.4 to 56 per week. The result, safer fire fighters, a more productive work environment, and a safer community, illustrates that the collective bargaining process works.

In Fort Worth, Texas, fire fighters experienced several years of decreasing health insurance benefits for fire fighters and rising costs for the city. Through the collective bargaining process, fire fighters were able to negotiate their healthcare out of the city plan and were placed in a Reference Based Pricing model which would save workers and the city 25 to 30 percent in claim

costs on average. In response, the city of Fort Worth received a guarantee that their contributions to the local Healthcare Trust would be limited to no more than 3 percent. This type of agreement, benefiting both parties mutually, would not have been possible without the right to legally bargain together.

Finally, in Hampton, New Hampshire a private hospital proposed providing limited emergency medical services. The proposal would have provided advanced life support service for only a portion of each day by inadequately trained workers from outside the community. As private employees, these workers retained the right to strike and could have posed a serious threat to continuity of service to the community. Never mind that these workers were not certified or trained as fire fighters.

Working together with the town of Hampton, fire fighters successfully negotiated their own service, providing 24 hours a day, 7 days a week advanced life support services to the area. Because of their ability to sit down and discuss what was necessary with the town, the fire fighters were able to negotiate time off from their regular duties to attend the necessary training and education sessions required to provide the new services. The total classroom and clinical training required over a 1,000 hour commitment from the individual firefighter. Because of the agreed-to contract, and the advanced training received by fire fighters, the town was able to bill insurance providers at higher rates and funds were used to subsidize EMT service response. In the end, the community was able to get 24 hour a day of protection, delivered by highly trained professionals that were under the command and control of the community, due to collective bargaining.

These examples are just a few of the literally thousands of beneficial public safety initiatives that have been achieved through labor-management cooperation.

THE PUBLIC SAFETY EMPLOYER-EMPLOYEE COOPERATION ACT (H.R. 1154)

At this point Madam Chairwoman, I will explain further the details of the Cooperation Act and how it works. First let me say that we do not refer to this bill as the Cooperation Act out of convenience. At the heart of this bill is the objective to promote cooperation between public safety employers and employees, whose relationship is critical to the effective delivery of emergency services in both a local and national response. The purpose of this bill is to allow for 50 state laws that give fire fighters and police officers access to a basic bargaining process that fosters cooperation between workers and their employers. This bill aims to provide the same process that dozens of states already provide to their workers, which has resulted in safer and more secure communities. We do not wish to impose a federal labor relationship law on states, preempt existing state statutes or needlessly interject the federal bureaucracy into local labor relations.

At the heart of the Cooperation Act is an enumerated list which outlines the basic set of collective bargaining rights to which we believe every public safety worker should have access. These include the right to collectively bargain, the right to form and join a union, the right to bargain over working conditions, hours and wages, the right to sign a legally enforceable contract, and the right to binding arbitration to resolve workplace disputes. This last part is important for both sides. Giving workers and employers a process to resolve disputes ensures that the outcomes of the collectively bargained process were determined in a fair, good faith way that both sides can believe

in and adhere to. The Cooperation Act also establishes a private right of action for both the employer and the employee. Aggrieved parties will be given the opportunity to have any lack of enforcement adjudicated in a federal district court. For example, if the FLRA chooses not to enforce portions of the law, then a worker or group of workers can attempt to compel their action through the legal process. This private right of action ensures that once the law is put on the books, it is properly enforced as intended.

To ensure a minimum bargaining process in all 50 states, the bill tasks the Federal Labor Relations Authority (FLRA), an entity with unparalleled expertise in public sector labor relations, to review state collective bargaining laws to see if they meet the minimum standards as outlined above. States that already have effective public safety collective bargaining procedures would not be impacted by this bill whatsoever. The minority of states that do not meet these common-sense standards would have two years and the utmost flexibility, as outlined within the bill, to enact their own public safety laws to meet the emergency services needed in each state. Once state legislation is enacted, the FLRA would review it to determine whether it complies with the minimum standards. The hope of those advocating for HR 1154 is that every state that has not already done so will take this opportunity to enact their own unique state bargaining law for fire fighters and law enforcement workers.

If a state chooses not to enact their own law, the FLRA will administer the responsibilities as outlined within the bill. The FLRA rules would then function as labor law in that state and the agency would serve as the labor board for public safety employers and employees. It is important to note that once a state subsequently adopts a bargaining law for public safety workers that complies with HR 1154's minimum standards, the FLRA's authority immediately dissolves. When provided the choice of enacting their own law or cooperating with the FLRA's involvement, we are confident that states will find ample incentive to enact and administer their own public safety collective bargaining laws.

It should also be noted that HR 1154 prohibits strikes and excludes management from the bargaining process. The bill gives localities the final say in all budgetary decisions, period. Under this bill, localities are not forced to agree to anything. All the Cooperation Act aims to do is give those who sacrifice so much a seat at the table to provide input into how they protect the public.

THE COOPERATION ACT RESPECTS STATES' RIGHTS

One important hallmark of HR 1154 is its flexibility and respect for states' rights. The bill preserves the sovereign right of states to draft their own public safety collective bargaining laws, and the bill has several specific protections to uphold the sovereignty of the state.

First, the bill protects all state laws that meet the common-sense minimum standards under the bill. No state law that already satisfies these baseline expectations will be impacted. Next, the bill protects state right-to-work laws by expressly preserving a states' ability to enforce a law which prohibits employers from requiring union membership or union fees as a condition of employment. This protection outlined in HR 1154 is in no way impacted by the 2018 Janus v. AFSCME decision, which made public sector agency fees unconstitutional. Third, the bill allows states to exempt a locality that has a population of less than 5,000 or that employs fewer than 25 full-time

employees. And finally, the bill protects local laws and ordinances that meet the minimum standards under the bill; no law that goes above and beyond the rights outlined in the Cooperation Act will be impacted. Make no mistake, under HR 1154, local officials still have the final say in how they spend local tax dollars. Communities are still in control of their own priorities and how to best meet them.

I wish to highlight that this bill respects the reality that in some states local jurisdictions have passed and administer their own collective bargaining laws, even if its state has no such law. In these circumstances, if a State chooses not to enact its own compliant legislation, leaving the responsibility for administering the Act to the FLRA, then the FLRA is not authorized to enforce or administer the Act with respect to the jurisdictions already in compliance. The FLRA's authority would be limited to those areas of the State where public safety employees have not been provided these basic rights.

Despite the profound impact that HR 1154 could have on the lives of fire fighters and other public safety workers, the impact on state and local governments would be negligible in most places. The majority of states already appear to be in full compliance with the minimum standards under the bill and would experience no impact at all. Even states that would be affected by HR 1154, the actual change in practice would be minor. For example, in some states bargaining is allowed, but public agencies are prohibited from signing legally binding contracts with unions. As a result, contracts between management and labor are only binding on unions and may be unilaterally voided by the employer at any time. In these areas, HR 1154 would simply require public agencies to keep their promises.

One final aspect of HR 1154 and its relationship to States' rights focuses on its Constitutionality. The Cooperation Act establishes its rights within Congress' authority to regulate commerce which is found in Article 1, Section 8 of the U.S. Constitution. It has been established by numerous precedent-setting court cases that the Federal government can regulate the relationship between public employees and their employers at the local level. This was explicitly proven when the Supreme Court held in Garcia v. San Antonio Metropolitan Transit Authority 469 U.S. 528 (1985) that Congress' authority to regulate commerce includes the authority to apply the wage and hour standards of the Fair Labor Standards Act to State and local governments.

One could argue that HR 1154 is less intrusive on the debate over States' rights since the bill does not dictate wage and hour requirements, but rather establishes the simple right to bargain collectively over such terms and working conditions.

Lastly, HR 1154 does not interfere with a state's sovereign immunity from legal action. The Supreme Court has ruled that individuals cannot sue States in Federal court, unless the State has waived its sovereign immunity. To address this legal reality the bill stipulates that if a State chooses against waiving its sovereign immunity, the FLRA shall have the exclusive power to enforce the Act regarding public safety employees that are employed by the State. When applying this question to employees of local governments, previous Supreme Court decisions have held that sovereign immunity does not apply to local governmental entities such as cities, towns and counties.

CONCLUSION

Since the birth of the labor movement, collective bargaining has been the bedrock foundation upon which it has thrived. The fundamental principle of fairness in decision making is largely responsible for virtually all the reforms that have transformed the way Americans view work. Whether it was securing a safe and logical work week schedule or identifying the proper number of workers needed to do a job effectively and safely, collective bargaining has resulted in the modern-day workplace we have come to know and depend on.

Collective bargaining is overwhelmingly used as a mechanism to enable labor and management to work together for their mutual benefit. The Cooperation Act represents a conversation between public safety employers and employees – a process – not an outcome. Nowhere is this relationship more important than when lives and property are at stake relative to those emergency services that are necessary to protect and secure our communities. Having a voice in the workplace is a fundamental right for fire fighters, just as the public has a fundamental right to rely on effective emergency services.

The Cooperation Act is simple in its design but vital in its objective. While doing everything possible to protect states' autonomy and respecting management, HR 1154 will provide a basic set of rights, providing fire fighters and police officers a good and fair process which will result in good and fair outcomes. When workers have a meaningful role and effective voice in the decision-making process, everyone is better off. Fire fighters are safer, and communities are safer. What could be more necessary than that?

Again, I would like to thank the Subcommittee for the opportunity to testify today and am happy to answer any questions you may have.

Chairwoman WILSON. Thank you, Mr. Brewer.

We will now recognize Mr. Messenger.

STATEMENT OF WILLIAM L. MESSENGER, J.D., STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, SPRINGFIELD, VIRGINIA

Mr. MESSENGER. Chairwoman Wilson, Ranking Member Walberg, members of the subcommittee, thank you for the opportunity to appear before you today.

I practice labor and constitutional law for the National Right to Work Legal Defense Foundation, advocating for individual employees in both the private sector and the public sector. And that includes representing Mark Janus in his case, Janus v. AFSCME, before the U.S. Supreme Court.

In Janus, the Supreme Court held it was unconstitutional under the First Amendment for the government to compel employees to subsidize a union's speech without their consent. As a result of Janus, an estimated 5 million public employees were freed from forced fee requirements and now have the right to choose whether or not to support a union.

But while public-sector workers now enjoy this freedom, many private-sector workers do not. In particular, those private-sector workers not fortunate enough to work in the Nation's 27 right-to-work States can still be forced to support a union against their will even though their public-sector brethren cannot.

Now, this inequity could be rectified by Congress passing the National Right To Work Act, which would extend right-to-work protections to all employees. With the National Right to Work Act, both public-sector employees and private-sector employees would enjoy the freedom to choose whether to support a union.

Unfortunately, some propose to make an inequitable situation even worse by stripping private-sector employees who enjoy right-to-work protections of those protections. A prime example is the Protecting the Right to Organize Act, H.R. 2474, which will permit unions to force private-sector workers to pay compulsory fees notwithstanding State right-to-work laws to the contrary. That act represents a step backwards. In the wake of Congress, Congress should seek to expand worker freedoms, not to curtail them.

But while Janus freed public-sector workers from forced fee requirements, many are still subject to forced representation requirements. Under monopoly bargaining laws, workers are required to accept a union as their exclusive representative for speaking and contracting with the government over certain public policies irrespective of whether the individual employee approves or not.

In other words, the government is dictating who speaks for employees in their relations with government. And, as a result, the individual worker is stripped of his ability to speak for himself or through other associations of his or her choice.

Now, the Supreme Court in Janus recognized that this form of government-compelled association "substantially restricts nonmembers' rights" and, quote, "causes significant impingement on associational freedoms."

And, in fact, it turns the democratic process on its head. Under monopoly bargaining laws, instead of citizens choosing their rep-

resentatives in government, the government is choosing representatives to speak for its citizens.

Even Franklin Delano Roosevelt, who enacted the National Labor Relations Act, opposed public-sector monopoly bargaining.

But, at a minimum, monopoly bargaining is a fundamentally flawed idea that Congress should leave up to the States of whether or not they should politically collectivize their own employees.

Currently, State labor relations are governed not by Federal law but by State law. And some States, such as Virginia and North Carolina, do not allow monopoly bargaining at all. And several other States, after suffering the negative consequences of handing union officials too much artificial political power, have been moving to reform their laws. As these States are moving to correct the situation, Congress should stay out of the way and not make their job harder.

And, in fact, the Tenth Amendment requires that Congress respect State sovereignty on this matter. Under the Tenth Amendment, the Federal Government cannot interfere with State governance by dictating both that States regiment their employees into mandatory advocacy groups and formulate their public policies based upon bargaining with those advocacy groups. Such interference with how States formulate their own public policies would violate basic principles of federalism and would not survive a legal challenge in the courts.

Thank you for the opportunity to testify today, and I look forward to answering any questions you may have.

[The statement of Mr. Messenger follows:]

Testimony of William Messenger
House Subcommittee on Health, Employment, Labor and Pensions
June 26, 2019

Chairwoman Wilson, Ranking Member Walberg, Members of the House Subcommittee on Health, Employment, Labor and Pensions:

Thank you for the opportunity to appear before you today. For nearly two decades I have been practicing labor and constitutional law at the National Right to Work Legal Defense Foundation, advocating for individual employees in both the private and public sectors.

In February 2018, I presented oral arguments on behalf of Mark Janus before the United States Supreme Court in the case of *Janus v. AFSCME*.

Central to this case was the question of the payment of compulsory union fees in the public sector. Because the advocacy that a government union engages in is inherently political, that advocacy is subject to heightened First Amendment protection. As a result, the Court rightly held in its ruling in favor of Mark Janus that it violates workers' First Amendment rights to compel them to subsidize a union's speech without their affirmative consent.

In response to *Janus*, several state governments, at the behest of union officials, have implemented various schemes to attempt to circumvent the decision. These schemes include forcing workers to attend mandatory union recruitment meetings, requiring the disclosure of personal information to union officials, and prohibiting workers from stopping the deduction of union dues from their wages except during short escape periods.

The National Right to Work Legal Defense Foundation has already challenged many such schemes in courts around the country, and will continue to do so for as long as it is necessary.

While public sector workers now enjoy the freedom to choose whether to support a union, many private sector workers do not. Specifically, those private-sector workers who are not fortunate enough to work in the nation's 27 Right to Work states can still be subjected to forced dues requirements, even though their public sector brethren cannot.

This inequity can be rectified by passing a National Right to Work Act, which will guarantee private sector workers the freedoms now enjoyed by public sector workers under *Janus*. With a National Right to Work Act, both public-sector and private-sector employees will be free to choose whether to support a union and its advocacy.

Unfortunately, some propose to make an already inequitable situation even worse by stripping all private sector workers of Right to Work protections. A prime example is the "Protecting the Right to Organize Act," H.R. 2474, which would permit unions to impose forced fee requirements on private sector workers notwithstanding state Right to Work laws.

While this effective repeal of state Right to Work laws is the worst feature of H.R. 2474, it is not its only negative feature. The bill also gives union officials more power to impose compulsory unionism on individual workers, such as by:

- Empowering the National Labor Relations Board (NLRB) to overturn secret ballot votes in which workers reject monopoly union representation and then impose that representation on the very workers who voted against it;
- Granting only unions and their agents the right to act as parties in certification election proceedings;
- Imposing forced unionism on millions of independent contractors, such as ridesharing drivers, via the California-invented "ABC Test";
- Allowing union officials to collectivize employees across multiple employers at once and making it much harder for independent workers to achieve decertification, by codifying the Obama-era *Browning-Ferris* decision;
- Allowing union officials to engage in secondary coercion and to file harassing civil suits to coerce employers to succumb to union organizing demands; and
- Empowering union officials to impose first contracts with forced fee requirements on employees through binding-interest arbitration.

All of these provisions are designed to magnify union power over workers who may believe they would be better off without a union. Rank-and-file workers want Congress to protect them *from* union officials, not to give union officials even more power to control their lives and paychecks.

While *Janus* freed public sector workers from forced fee requirements, many of these workers remain subject to forced representation requirements. Under monopoly bargaining, euphemistically known as "exclusive representation," the government requires workers to accept a union as their mandatory agent for speaking and

dealing with the government over certain issues, irrespective of whether each individual worker approves or not. This results in individual workers losing the power to speak for themselves in dealing with their government employer.

The Supreme Court in *Janus* recognized that this form of government compelled representation "substantially restricts the nonmembers' rights" and causes a "significant impingement on associational freedoms." Indeed, monopoly representation turns the democratic process on its head. Instead of citizens choosing their representatives in government, the government is choosing representatives to speak for its citizens.

Public-sector monopoly bargaining is such a fundamentally flawed idea that Congress should, at a minimum, leave it up to the states and not get involved. Currently, state labor relations are governed not by federal law, but by state law. Two states, Virginia and North Carolina, do not allow government entities to enter into collective bargaining agreements with unions at all. The 10th Amendment protects the rights of states to set their own policies with regards to labor relations.

For most of American history, federal and state governments rightly refused to engage in union monopoly bargaining. This is due to fundamental differences between the public and private sectors.

In the private sector, negotiations between an employer and a monopoly bargaining representative concern issues that affect that employer and its employees. In the public sector, negotiations between government officials and union representatives concern political issues that affect third-parties: individual citizens.

That why's President Franklin Roosevelt, who signed the National Labor Relations Act into law, was firm in his opposition to monopoly bargaining in the public sector. He said:

> 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. Accordingly, administrative officials and employees

> alike are governed and guided, and in many instances restricted, by laws which establish policies, procedures, or rules in personnel matters.
> …
>
> Particularly, I want to emphasize my conviction that militant tactics have no place in the functions of any organization of Government employees. Upon employees in the Federal service rests the obligation to serve the whole people, whose interests and welfare require orderliness and continuity in the conduct of Government activities. This obligation is paramount. Since their own services have to do with the functioning of the Government, a strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of Government until their demands are satisfied. Such action, looking toward the paralysis of Government by those who have sworn to support it, is unthinkable and intolerable.

Even George Meany, former president of the AFL-CIO said in 1955 that "It is impossible to bargain collectively with the government."

Since then, of course, the thinking of union officials has changed. As public sector monopoly bargaining has swelled to encompass nearly half of all unionized employees in the country, union officials have grown dependent on that revenue stream.

In state after state where unions have gained monopoly bargaining powers in the public sector, costs skyrocket while quality of service declines. But monopoly bargaining allows unions to become the most powerful force in state politics and to pour millions of dollars and thousands of man-hours into electing public officials, allowing unions to sit on both sides of the negotiating table.

We have seen this play out in states like California and Illinois, where unfunded pension obligations and inefficiencies caused by wasteful work rules and featherbedding have set state and local budgets on a glide path toward insolvency.

And often, when states try to address these problems, union officials call a strike, as we have seen recently in schools around the country. And who are they striking against? Voters, taxpayers, and citizens who rely on vital public services are at the mercy of union officials who can grind government operations to a halt if they think it will get them what they want.

Many states that have given union officials so much artificial political power have come to regret it. As they start to correct matters, Congress should stay out of their way, not make their job harder.

Thank you for your attention, and I look forward to answering your questions.

Chairwoman WILSON. Thank you, Mr. Messenger.
We will now recognize Mr. Paterson.

STATEMENT OF TEAGUE P. PATERSON, DEPUTY GENERAL COUNSEL, AFSCME, WASHINGTON, D.C.

Mr. PATERSON. Thank you, Chairwoman Wilson, members of the committee. My name is Teague Paterson. I am deputy general counsel for the American Federation of State, County, and Municipal Employees, or AFSCME.

I want to thank Chairwoman Wilson and Ranking Member Walberg for the opportunity to testify at this hearing. I also thank Congressman Cartwright and Senator Hirono for sponsoring the Public Service Freedom to Negotiate Act, and also Chairman Scott and the many other members of this committee for cosponsoring this important legislation.

AFSCME members provide the vital services that make America happen. In major cities and in small towns across the United States, AFSCME members work in hundreds of occupations dedicated to serving the public, including in the fields of justice, education, healthcare, transportation, public works, and many, many others.

Why do working people join unions? Simply so that they can productively address their working conditions, gain economic security, and improve the work they do for their communities.

Notably, low-and middle-wage workers gain the most from unions, reducing economic inequality and gender and racial wage gaps, while also providing a means to address other forms of discrimination faced by women, people of color, LGBTQ-plus individuals, and the disabled.

Public service unions also benefit communities. Union members use their collective voice to advocate for better public services, like ensuring that 911 call centers have the staff necessary to quickly answer calls and dispatch help and also to make sure that schools hire staff necessary for students to succeed.

Surveys and experience show that unions are more popular than ever, and when public employees have a meaningful right to bargain, they are choosing to express that right by forming and joining unions. It is, in fact, a right that is guaranteed by the First Amendment of the United States Constitution.

This bill is needed because, in many States and communities, public servants have been denied a meaningful opportunity to exercise this fundamental right. What is more, organized anti-union forces are working to further undermine unions, dismantling protections for public service workers who wish to exercise this important right. We have heard from some of them today.

In fact, we just now heard from Mr. Onder regarding his bill in Missouri, H.B. 1413, which he described as a step forward. But, this past March, a Missouri judge issued an injunction halting that law. Here is how the judge described it, and I quote: "a blatant attempt to subjugate employees to the whims and caprices of management, free from the obligation to act in good faith."

The judge also Stated it renders collective bargaining, quote, "a farce," and it also, quote, "impermissibly reaches deep into the me-

chanics of self-governance and dictates the terms and circumstances under which unions are permitted to express their political voice and opinion."

So it is laws like this in Missouri and other States that make this act necessary.

The Public Service Freedom to Negotiate Act empowers the Federal Labor Relations Authority to protect the right of public service employees to join a union, to collectively bargain, to access dispute-resolution mechanisms, and to be free from the imposition of rigged recertification elections. And it is drafted with the powers, rights, and limitations granted by the Constitution in mind.

Private-sector labor relations have been regulated under the NLRA for more than 80 years. Because public-sector employer-employee relations affect commerce in the same way and to the same degree as in the private sector, Congress assuredly has the authority to enact equivalent protections in the public sector.

But this act does so in a way that ensures local control and does not go beyond the requirements of the Commerce Clause and is in keeping with principles of federalism. It guarantees that States can design their own solutions while completely exempting the smallest municipalities altogether. But for States that do not do that, it protects their rights of public service workers while providing a means to cooperatively and productively resolve disputes.

In conclusion, this legislation will help level the playing field and ensure that dedicated public service employees can negotiate for fair wages, hours, and working conditions and improved public services for our communities.

Thank you for this opportunity to testify. It is a privilege and honor to appear before this committee, and I am happy to answer any questions. Thank you.

[The statement of Mr. Paterson follows:]

Testimony of Teague P. Paterson
Deputy General Counsel
American Federation of State, County and Municipal Employees (AFSCME)
Before the
House Committee on Education and Labor
Subcommittee on Health, Employment, Labor and Pensions
June 26, 2019
On
Standing with Public Servants: Protecting the Right to Organize

Chairwoman Wilson, members of the committee, I am Teague Paterson, Deputy General Counsel for the American Federation of State, County and Municipal Employees (AFSCME). AFSCME represents more than one million members. I want to thank Chairwoman Wilson and Ranking Member Walberg for convening this hearing and for the opportunity to testify. I also want to thank Congressman Cartwright and Senator Hirono for sponsoring the Public Service Freedom to Negotiate Act, and Chairman Scott and the many other members of this committee for co-sponsoring the bill.

AFSCME members provide the vital services that make America happen. In major cities and in small towns across the United States, our members work in hundreds of occupations dedicated to serving the public. Our members' varied professions include:

- Justice system professionals, including law enforcement officers, 911 dispatchers, corrections officers and the youth services workers that help troubled juveniles, child protections workers who keep our most vulnerable safe, as well as probation and parole officers that monitor and support offenders, and social workers that help support crime victims;

- Education professionals working with students of all ages—from early childhood, to K-12 schools, higher education—including paraprofessionals, librarians, nurses, maintenance workers, nutrition and transportation workers, clerical and administrative professionals, and others;

- Health care system professionals, including nurses, technicians, physician assistants, therapists, doctors, pharmacists, and dieticians; as well as the emergency services/EMT workers, behavioral health workers, and home care workers, all working to ensure access to quality health care for millions of Americans;

- Transportation and public works professionals responsible for our nation's roads, transportation networks, ports and airports; as well as the operators, maintenance workers, engineers and scientists working at public utilities to ensure that our communities have access to safe and affordable drinking water; and

- Many others, including camp counselors and WIC program nutritionists, zookeepers and horticulturists, park rangers and lifeguards, public housing professionals, building and

fire code inspectors, and hundreds of other public service jobs fulfilled by people working every day to make our communities better places to live.

Unions Benefit All Workers

Working people join and form unions to gain a collective voice on the job so they can address their working conditions, gain economic security, and improve the work they do. By standing together in strong unions, members can negotiate higher wages and safer workplaces. Notably, those who gain the most from forming and joining unions are low- and middle-wage workers, making unions a key part of addressing income inequality.[1] Unionized workplaces also play a critical role in reducing gender and racial inequality by raising wages for women, reducing racial wage gaps, and providing the means to address other forms of unfair discrimination on the job.[2] Union members seek and negotiate employer-provided health care, retirement plans, and other benefits such as paid sick and family leave. Union workplaces are also safer workplaces.[3]

Strong unions also benefit non-union workers. In regions and sectors with active unions, wages are higher for all workers—union and non-union alike—because non-union employers must also raise their wages to remain competitive.[4]

Public service workers and public sector unions, like AFSCME, provide extensive benefits to their communities. For public service workers, it is not just a job, it's a calling. Union members working in the public service use their collective voice to advocate for better and more efficient public services. Union members are engaged in the fights to ensure that 911 call centers have the staff they need to answer calls quickly and dispatch help; that hospitals have the resources necessary to protect patients; that the elderly and disabled receive the care they need at home rather than in the emergency room; and that schools hire the counselors, librarians, paraprofessionals and other staff necessary for students to succeed.

With everything that unions offer their members, working people in general, and our communities, it should come as no surprise to the Committee that the majority of working people say that they would vote to form a union, if they could do so without the fear of reprisal or retaliation. However, in many states and communities, public servants are deprived of this basic right. And anti-union corporations, their owners, and the politicians and think tanks that they fund, are working in lockstep to undermine public employees' union rights and the effectiveness of their unions.

Workers Must be Free to Organize

It is because unions were so successful in carving out a place for working and middle-class Americans in the country's economic, social and political spheres, that unions have become the target of corporate interests and the politicians that are their benefactors. In their view, any

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[1] Josh Bivens and others, "How Today's Unions Help Working People," Economic Policy Institute, August 24, 2017.
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*

power that working people have obtained has come at their expense. It is to be expected that corporations would want to maximize profits, eliminate as much as possible their tax liability, dominate political discourse, and seize the provision of public services to obtain additional revenue streams and profit opportunities. But a winner-takes-all economy is bad for America. Workers, organized in unions, are one of the only institutions that stand in their way. Public employee unions – which make up half of the union movement – are the targets of these monied interests. And this attack on public employee unions has, by design, taken place largely outside of the public eye and often through proxies and factotums.

The Supreme Court's 5-4 decision a year ago in *Janus v. AFSCME Council 31* provides a textbook example of how corporate interests rig the system in their favor. Following the Supreme Court's determination in *Citizens United* that corporations are people, and corporate money is protected speech, the billionaires and their foundations implemented a strategy to monopolize this form of "speech" by seeking to dismantle the one institution that effectively checks their agenda: America's unions. In their own words, the purpose of the *Janus* case was to "defund" and "defang" unions.[5]

For decades the proposition laid down in the 1977 case *Abood v. Detroit Board of Education* was non-controversial, and accepted by conservative economists, politicians and over 17 Supreme Court justices across the ideological spectrum. Because a union is obligated to represent all employees in a bargaining unit, members and nonmembers alike, it is fair that all bargaining unit members contribute to the cost of the union's representation, but not its political or ideological expenditures. Attacking *Abood*'s holding, which confirmed these nonmember "fair share fees" were constitutional, became a goal of these groups because they thought – incorrectly as it turns out – unions would be weakened without them.

The *Janus* case began when Bruce Rauner was elected Governor of Illinois and proceeded to attempt to dismantle Illinois' public employee unions. In addition to pumping money via his family foundation into anti-union groups like the Illinois Policy Institute (along with the Bradley, Koch, DeVos and other dark money funded foundations, who fund this and other State Policy Network affiliates),[6] Governor Rauner refused to negotiate with state employee unions, and issued an executive order declaring fair share fees unconstitutional.[7] When the courts struck down his order, he then sued every single state employee union on the basis that fair share fees were contrary to the First Amendment. But the governor never paid any fair share fees, and so he was dismissed from the case. His family foundation's allies, the NRTW Foundation and the "Liberty Justice Center", found three state employees, including Mark Janus, to join Rauner's lawsuit and save it from being dismissed. Ultimately Janus' claim was taken up by the Supreme Court, and the five conservative-minded justices of the Supreme Court made short shrift of *stare decisis* and principles of judicial restraint, and overruled *Abood* by equating money with speech

[5] Ed Pilkington, The Guardian, "Rightwing alliance plots assault to 'defund and defang' America's unions," August 30, 2017.
[6] Mick Dumke, ProPublica, and Tina Sfondeles, Chicago Sun-Times, "As Conservative Group Grows in Influence, Financial Dealings Enrich Its Leaders," February 8, 2018 ProPublica Illinois.
[7] Executive Order 2015-13; see also Celine McNicholas, Zane Mokhiber, and Marni von Wilpert, "Janus and Fair Share Fees: The Organizations Financing the Attack on Unions' Ability to Represent Workers," February 21, 2018, Economic Policy Institute.

and collective bargaining with political speech. Just weeks after the decision, Mr. Janus accepted his reward when he quit his job in the public service and took a position as a "senior fellow" with the Illinois Policy Institute which, as noted, receives considerable funding from Rauner's Family Foundation.[8] These same organizations are continuing their attacks in the courts against public employee unions on various theories which, to date, have not been successful.

Janus, and cases like it, are the product of a corporate-backed effort to coordinate attacks on unions and working people to weaken institutional opposition to their agenda. This agenda is financed by the same billionaires who operate, and move millions of dollars, through a shadowy network of think tanks, legal service corporations, PACs, lobbyists and judicial junkets (disguised as educational seminars and retreats for judges). One front of this attack, which was rolled out in the days after the *Janus* decision, are aggressive dissuader campaigns that seek to convince public employees to quit their union, often relying on false promises that by doing so public employees "give themselves a raise" but "lose nothing." Of course, if that were true these corporate-backed groups would not be spending their time, money and efforts on these direct propaganda campaigns, and our members have not been fooled by these misleading slogans.

Another frontline in this war on working people's rights has simultaneously played out in state legislative houses and governors' mansions. While Wisconsin governor Scott Walker's successful efforts in 2011 to stifle Wisconsin public servants' and teachers' voices was fully reported in the national news, America's unions continue to face similar attacks in many states across the country. Virtually every state has seen these bills introduced, and a complete accounting of these state legislative attacks is well beyond the scope of this testimony. Below are some examples.

On February 17, 2017, after fifty years of protecting the rights of public employees to collectively bargain, the Iowa legislature initiated House File 291, dismantling member protections and limiting the scope of bargaining and union governance.[9] Like Wisconsin Governor Walker's Act 10, the Iowa law restricts bargaining units to negotiate only over whether public servants may receive a raise equaling inflation, and forces public employees to undergo continual, costly and time-consuming "recertification elections," in which a non-vote is counted as a "no vote."[10] Likewise, on June 1, 2018, Missouri Governor Eric Grietens signed HB 1413 into law hours before stepping down from office.[11] That law places broad prohibitions on unions and members both at the bargaining table and at the ballot box, and is specifically designed to hamper unions' political participation, treating them differently from all other organizations when it comes to political participation and support for political causes. The law also imposes onerous and unfair "recertification elections" in similar manner as the Iowa and Wisconsin laws.

While some states have sought to practically eliminate collective bargaining for all public employees, other states are targeting specific groups. In Georgia, North Carolina, South

[8] Mitchell Armentrout, Chicago Sun-Times, "Mark Janus Quits State Job for Conservative Think Tank Gig After Landmark Ruling," July 20, 2018.
[9] H.R. 291, Gen Assemb., Reg. Sess. (Iowa 2017). *See also* William Petroski & Brianne Pfannenstiel, Des Moines Register, "Iowa House, Senate Approves Sweeping Collective Bargaining Changes," February 16, 2017.
[10] *Ibid.*
[11] H.B. 1413, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

Carolina, Virginia, and Texas state laws prohibit public teachers from collective bargaining,[12] while teachers in Indiana are limited to collectively bargaining only over wages, salary, and wage-related fringe benefits, which include insurance, retirement benefits, and paid time off.[13]

Other state laws are pushing an anti-union agenda through a piecemeal strategy, such as eliminating processes that facilitate members paying their union dues or imposing onerous, costly and unnecessary recertification requirements. For example, buried in the 205 pages of Florida HB 7055, adopted in 2018, was a requirement that teachers be required to undergo a "recertification" election, in which non-votes are counted as no votes, in the event the number of dues-paying members in the unit fell below fifty percent. It has been established that nonpayment of dues is not evidence of a lack of desire for union representation and the two are not linked, and the law simply imposes additional costs and burdens associated with union representation. Similarly, that same year in Michigan, Senate Bill 1260 was introduced, which like the other bills counts absent votes as "no votes" and imposes a recertification election every other year.[14] Similar bills have been introduced in other states[15], as ALEC and the SPN network have made these rigged "recertification" requirements a top state legislative priority.

Workers Support Unions

Despite the coordinated attacks on working people, where workers are afforded an opportunity, they reject these attacks and stand by their unions. In 2011, Ohio Governor John Kasich signed Senate Bill 5,[16] which was similar in its scope of regulation to Governor Walker's Act 10, organized workers forced a referendum and Ohio voters forcefully rejected it.[17] Last summer voters in Missouri overwhelmingly rejected the state legislature's passage of a so-called "right to work" law by repealing the law with an over thirty percent margin. The results of experimental "recertification" elections imposed on public workers also prove this point. In Missouri, Wisconsin and Iowa, where these methods have been forced on workers, and despite the unfair processes, procedures and expenses, public workers have nearly universally and consistently voted to keep their unions.

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[12] Milla Sanes, John Schmitt, *Right to Collective Bargaining*, REGULATION OF PUBLIC SECTOR COLLECTIVE BARGAINING IN THE STATES, Mar. 2014 at 4. *See also* Martin Malin, *The Legislative Upheaval in Public-Sector Labor Law: A Search for Common Elements*, ABA Journal OF Labor and Employment Law, January 2012, at 156 (stating that Nevada removed bargaining rights from doctors, lawyers, and some supervisors.
[13] *Ibid. See also* H.B. 4468, 100th Gen. Aseemb., Reg. Sess. (Ill. 2019) (limiting collective bargaining from terms and conditions of employment to wages only, denied on Jan. 9, 2018).
[14] S.B. 1260, 2018 Leg., Reg. Sess. (Mich. 2018); *see also* Lindsay VanHulle, "Michigan GOP to Public Unions: Recertify Every Two Years or Die," Bridge, December 5, 2018.
[15] *See, e.g.*, H.B. 1607, 2017 Leg., Reg. Sess. (Wash. 2017), S.B. 5551, 2017 Leg., Reg. Sess. (Wash. 2017).
[16] S.B. 5, 129th Gen. Assemb., Reg. Sess. (Ohio. 2011) *see also* S.B. 1260, Reg. Sess. (Mi. 2018) (requiring recertification every two years) *see also* H.B. 871, Gen Assemb., Reg. Sess. (Pa. 2017) (requiring public organizations representing a collective bargaining unit to file quarterly reports documenting annual salary and benefit costs of all officers and employees of the employee organization, salary and benefit increases of officers and employees, and a detailed summary of all expenses incurred throughout the quarter which required the expenditure of membership dues).
[17] https://www.sos.state.oh.us/elections/election-results-and-data/2011-elections-results/state-issue-2-november-8-2011/#gref

Public employees have vigorously voiced their needs and demands through other means, namely strikes. In the last two years public employees have made their grievances known by withholding their work and engaging in work stoppages. Public school teachers have struck in Arizona, Oklahoma, West Virginia, North Carolina, Kentucky, Tennessee, and Virginia; university professors at Wright State University and Virginia Commonwealth; and bus drivers have engaged in job actions in Georgia, despite laws in all of these states prohibiting public employee strikes. History proves that where workers have no productive outlet for resolving grievances, they engage in disruptive job actions; this is as true for the private sector as the public sector. The 1940 treatise "One Thousand Strikes of Government Employees," by David Ziskind, published by the University Columbia Press, meticulously documents public employee strike activity over the preceding hundred years, verifying over 1,100 such actions across American states and cities while also noting that the available documentation accounts for only a portion of the actual public sector strike activity. The many states that have afforded robust collective bargaining rights to public employees did so in the face of work stoppages in the 1960s through 1980s. After channeling their labor relations into a cooperative and productive process, these states saw dramatic reductions of the incidence and length of disruptive economic actions by public employees, and in some cases their elimination.

But the consequences of failing to ensure adequate collective bargaining rights in the public sector involves more than reducing disruption, because where state laws have curtailed or all-but eliminated collective bargaining rights, there have been real human and societal consequences. In Iowa, as I have noted, the enactment of anti-union legislation stripped public sector unions of the right to bargain over working conditions—including essential health and safety measures—as well as the right to file grievances through a collectively bargained contract.

The disastrous consequences of this type of legislation are exemplified by the story of Tina Suckow, an AFSCME nurse and a grandmother who served patients at the Independence Mental Health Institute. Tina knew that working at a mental health facility could be dangerous, but she took the job because she believed in caring for those in need. In October 2018, Tina responded to a page from her colleagues to help with an aggressive patient. After staff was unable to deescalate the situation, supervisors made the decision to use new safety equipment to physically restrain the patient. Unfortunately, staff had not been trained on how to properly use the new equipment. The patient grabbed Tina and began to beat her. By the time her colleagues were able to restrain him, Tina had suffered severe injuries, including a neurological ailment she still suffers from today. Yet instead of receiving support from her employer, the state of Iowa turned its back on her. Management at the institute neglected to report the attack to law enforcement or investigate the situation. After her medical leave expired, they refused to allow her co-workers to donate vacation leave or even grant Tina's request to take unpaid leave to recover. Just two weeks after undergoing surgery to treat her injuries, Tina was fired.

Examples like this illustrate why the people that dedicate their careers to public service need strong unions. If her union had not been stripped of the right to negotiate training and safety measures, staff would have had the ability to negotiate training regarding the use of new equipment before it was implemented, and this attack may have been prevented. If her union had not been stripped of the right to negotiate the use of leave, her colleagues could have supported her while she recovered. And if her union had not been stripped of her contract protections and the right to file grievances through her collective bargaining contract, she could have appealed

her unjust firing. AFSCME members like Tina don't enter public service to get rich. They do it because they want to help others and make their communities better places to live. Dedicated public servants like Tina deserve the freedom to join a strong union that is empowered to protect them on the job.

Sadly, we know that there are countless other stories like Tina's, where legislation designed to weaken unions is endangering the people working to serve their communities. In Wisconsin, Act 10 prohibited public service unions from negotiating for fair wages, adequate benefits, and safe working conditions. Without a voice on the job, many experienced officers chose to retire rather than work in dangerous facilities where their views on maintaining safety would not be considered. Vacancies ballooned as the state refused to pay competitive wages for new officers. With prisons understaffed and officers overworked, assaults on staff became a crisis in facilities statewide.[18]

Consider also the divergent paths by the neighboring states of Wisconsin and Minnesota. While Governor Walker was pursuing a campaign against public employees and their union under Act 10, Minnesota took a different approach, strengthening labor standards and employee voice.[19] Since 2010, Minnesota has outperformed Wisconsin by nearly every available measure. Job growth, wages, and household incomes have all grown faster in Minnesota. Minnesota is also attracting new residents, while more people are moving out of Wisconsin than into it. Indeed, the detrimental impact of Act 10 on teacher recruitment, retention, and professionalization, and resultant degrading of educational outcomes of Wisconsin students, is now well documented.[20]

We are now at an inflection point. In recent decades the benefits of economic growth have accrued almost exclusively to the wealthiest. Anti-union politicians continue to undermine the rights of working people. Corporate profits and tax breaks for the wealthy are consistently prioritized over fair wages and decent public services. Working people, again, want to be heard. That is why surveys show that unions are more popular than ever before.[21] Where public employees have a meaningful right to bargain, they are choosing to express that right by joining unions. AFSCME's recent gains illustrate this fact. Since 2016, workers have sought AFSCME representation and together we have won the right to represent more than 245 new collective bargaining groups. In 2018, AFSCME added more than 9,000 dues paying members and more than 18,000 dues paying retirees—even as billionaires and corporations spent vast sums on campaigns attacking our union and attempting to persuade our members to quit.

PSFNA Levels the Playing Field

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[18] Molly Beck and Patrick Marley, Milwaukee Journal Sentinel, "GOP leaders say wage increases not on table despite Wisconsin prison overtime costs, staffing shortage," July 12, 2018; Mark Leland, FOX 11 "Investigates growing prison staffing shortage," July 20, 2015.
[19] David Cooper, "As Wisconsin's and Minnesota's Lawmakers took Divergent Paths, so did Their Economies," Economic Policy Institute, May 8, 2018.
[20] David Madland and Alex Rowell, "Attacks on Public-Sector Unions Harm States: How Act 10 Has Affected Education in Wisconsin," Economic Policy Institute, November 15, 2017.
[21] Lydia Saad, Gallup Research, "Labor Union Approval Steady at 15-Year High," August 30, 2018; Drew DeSilver, Pew Research Center, "Most Americans view unions favorably, though few workers belong to one," August 30, 2018.

Public sector workers dedicate their careers to serving their communities, and they deserve the same fundamental labor protections as private sector workers. The Public Service Freedom to Negotiate Act corrects the injustice of our current system which affords no guarantees that public service workers may advocate for themselves and their communities.

The PSFNA provides a simple solution. It adopts a minimum level of tried-and-true labor relations principles that have proven effective, and applies them to states that do not accord these minimum guarantees to their state and local employees. Where states have neglected to ensure public-sector workers can express their right to form or join a union, the legislation ensures these rights will be respected, in the following ways:

- The PSFNA ensures that the decision about whether to form a union is the result of free choice involving a democratic majority-choice process.
- If a defined group of employees join or form a union, the PSFNA obligates employers to collectively bargain over wages, hours, and terms and conditions of employment with their public employees.
- The Act provides for dispute resolution mechanisms, such as mediation, fact-finding or arbitration, to ensure that disputes are resolved cooperatively and objectively, and do not escalate into actions harmful to the community and economy;
- To ensure union representation is the result of employee free choice, PSFNA guarantees public service workers the right to associate with or not to associate with a union, and protections from retaliation or discrimination in the exercise of that individual decision.
- PSFNA ensures the right of union members to utilize voluntary payroll procedures for union dues and prohibits the drain on resources and poll taxes associated with imposing frequent, rigged "recertification" requirements on employees' expression of their right to be represented by a union.
- Importantly, the Act ensures that its guarantees and protections are meaningful by providing a private right-of-action by workers to file suit for the limited purpose of enforcing their labor rights in the courts.

Commerce Clause Grants Congress Authority to Regulate

The PSFNA is crafted to ensure it is a proper exercise of authority conferred by the Commerce Clause, and as explained further below, does not improperly intrude on state sovereignty. It has long been recognized that the Commerce Clause grants Congress the authority to regulate the conditions of public sector employment. The Federal Labor Standards Act (FLSA), enacted under the Commerce Clause, sets a national floor for minimum wage and overtime laws, including those affecting public sector workers.[22] Title VII of the Civil Rights Act regulates the hiring, firing, and workplace conduct of state employees.[23] The Americans with Disabilities Act regulates discrimination against disabled persons and requires positive steps by employers,

[22] *See Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 553 (1985) ("Congress' action in affording SAMTA employees the protections of the wage and hour provisions of the FLSA contravened no affirmative limit on Congress' power under the Commerce Clause.").

[23] Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e(f) (specifically including "employees subject to the civil service laws of a State government, governmental agency or political subdivision").

including state and local governments, to engage in interactive processes to provide necessary accommodations.[24] Indeed, the Supreme Court has stated that federal power under the Commerce Clause applies to activities without regard to whether the activity affecting commerce involves a public or private entity.[25]

Private sector labor relations have been regulated under the NLRA—without Constitutional objection—for more than eighty years. Because public sector employer-employee relations affect commerce in many of the same ways as private sector employers who are regulated by the NLRA, there is no reason Congress may not enact equivalent reforms, with equivalent Constitutional safeguards, to regulate public employee-employer labor relations.

In *NLRB v. Jones & Laughlin Steel Corp.*,[26] the Supreme Court upheld the constitutionality of the NLRA because it included "jurisdictional language" that limited the authority of the NLRB to employers with operations that affected commerce.[27] Rather than attempting to define in advance which employers fit this definition, the NLRA tasked the Board with determining on a case-by-case basis whether it had a constitutional basis for jurisdiction.[28] Likewise, PSFNA is built on the same sensitivity—defining a "public employee" as working for an employer engaged in commerce.[29]

In some cases, jurisdiction is clear; consider, for example, a ranger in a state park that attracts out-of-state tourists. In others, it may be helpful to look to the body of jurisdictional precedent built over the past seventy-five years by the NLRB.[30] For example, if the NLRB's jurisdiction includes labor relations at a private university,[31] public universities similarly engage in commercial activities, and attract students, faculty, staff and researchers in ways that affect interstate commerce. Likewise, while private corrections facilities undoubtedly affect commerce (and therefore are subject to the NLRA), the many more publicly-operated correctional institutions affect commerce more substantially as a result of their greater scale and, therefore, ensuring positive labor relations is an equal if not more pressing goal of Congress I that sector. The same concerns hold true for private and public hospitals,[32] schools, waste management,

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[24] Americans with Disabilities Act, 42 U.S.C. § 12101(b)(4) (2012) (invoking "the sweep of congressional authority . . . to regulate commerce"); *see also Walker v. Snyder*, 213 F.3d 344, 346 (7th Cir. 2000) ("[T]he commerce clause gives Congress ample authority to enact the ADA."), *cert.* denied, 531 U.S. 1190 (2001).

[25] *See Garcia*, 469 U.S. at 530 (reaffirming Maryland v. Wirtz, 392 U.S. 183, 197 (1968) ("If a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to federal regulation.").

[26] 301 U.S. 1, 31 (1937)

[27] *See* National Labor Relations Act, 29 U.S.C. § 160(a) (2012) ("The Board is empowered . . . to prevent any person from engaging in any unfair labor practice . . . *affecting commerce*."); *Jones & Laughlin*, 301 U.S. at 31.

[28] *Jones & Laughlin*, 301 U.S. at 31.

[29] Public Sector Freedom to Negotiate Act, § 2(11)(a) (defining a public employee as an "individual employed by a public employer, who in any work week is engaged in commerce of in the productions of goods for commerce").

[30] *See Jurisdictional Standards*, NLRB, https://www.nlrb.gov/rights-we-protect/law/jurisdictional-standards. Over the years, these determinations have built into a body of precedent, covering "the great majority of non-government employers with a workplace in the United States." *Id.* For example, the Board has jurisdiction over retailers if they have an annual volume of business of $500,000 or more, private hospitals with an annual volume of $250,000 or more, and "essential links in the transportation of goods or passengers" at $50,000 or more. *Id.*

[31] *See Cornell University*, 183 NLRB 329 (1970).

[32] *See Butte Medical Properties*, 168 NLRB 266 (1967).

airports, water treatment plants, motor vehicle, road safety, and transit systems. Federal and state contractors are also covered by the NLRA on the basis of their receipt of public funds, and for Commerce Clause purposes there is no difference between publicly-funded or publicly-operated enterprises. Also, consider the recent 35-day federal government shutdown and its immediate and dire effects on commerce, which are still being felt. In this way, the PSFNA addresses a central Federal concern, but does so in a way that is indulgent of state and local labor relations. Rather than supplant state and local laws, as does the NLRA, it establishes minimum standards that have been proven to promote labor peace and reduce the likelihood of labor relations disputes that disrupt economic life.

Therefore, the PSFNA includes several provisions to maintain local control beyond the requirements of the Commerce Clause. The bill guarantees any state that fails to meet its standards an opportunity to design and implement its own solutions,[33] contains explicit instruction for the FLRA to consider "to the maximum extent practicable" the opinions of affected employers and workers,[34] and exempts the smallest municipalities from jurisdiction altogether.[35] Its enforcement scheme ensures it will impact only those states and employers that fail to meet its articulated minimum standards,[36] leaving others to manage their labor relations as they see fit. While these added protections are not necessary to ensure the constitutionality of the PSFNA, they demonstrate a commitment to federalism that further bolsters its compatibility with both the letter and the spirit of the Commerce Clause.

PSFNA Respects the Principles of State Sovereignty

Although Congress is empowered by the Tenth Amendment to pre-empt state laws under the Commerce Clause,[37] it may not "commandeer the legislative processes of [s]tates by directly compelling them to enact and enforce a federal regulatory program."[38] In *Hodel*, it was not commandeering when Congress invoked the Commerce Clause to create federal coal mining standards, gave states a limited opportunity to propose their own programs to implement those standards, and then enforced federal regulations against those that failed to do so.[39] The PSFNA, like the Surface Mining Act in *Hodel*, grants states the option to implement their own solutions in order to avoid preemption, but stops short of actually compelling them to do so.[40] Thus, like in *Hodel*, Congress has not commandeered any legislative process and there is no violation of the Tenth Amendment.

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[33] § 4(d)(1)(A)-(C) (ensuring state legislatures have at least one full legislative session after enactment, or any subsequent determination of the FLRA, to address shortcomings and apply for a new determination).
[34] § 3(a)(2) (instructing the FLRA to consider the opinions of local stakeholders generally, and grant the maximum weight practicable to any agreement between stakeholders that state laws are sufficient).
[35] § 8(a)(3)(A) (exempting from the requirements of the PSFNA any political subdivision with a population of under 5000 people, or which employs fewer than 25 public employees).
[36] § 3(a)(3) (limiting the criteria the FLRA may consider to those specifically listed).
[37] *See New York v. United States*, 505 U.S. 144, 157-58 (1992).
[38] *See Hodel v. Va. Surface Mining & Reclamation Ass'n., Inc.*, 452 U.S. 264, 288 (1981); *see also Printz v. United States*, 521 U.S. 898, 935 (1997); *New York*, 505 U.S. at 188.
[39] *See Hodel*, 452 U.S. at 272, 288 ("[T]he States are not compelled to enforce the steep-slope standards, to expend any state funds, or to participate in the federal regulatory program in any manner whatsoever.").
[40] *See* § 3(d)(1).

The Eleventh Amendment ensures states are not hauled into court by citizens of other states and forced to pay damages.[41] Under the seminal case *Ex Parte Young*,[42] the Supreme Court held that suits to require state personnel and administrators to comply with Federal law are permitted under the Eleventh Amendment.[43] This is because without the ability to compel compliance with federal law, the Supremacy Clause is meaningless. While the PSFNA establishes a right of action in federal courts by aggrieved employees, it authorizes only the type of claims for relief against States that have long been permitted under the Eleventh Amendment. It does not allow a plaintiff to directly sue a state or to seek damages, but only to initiate action against a "named State administrator" in order to "enjoin such administrator to enforce compliance,"[44] The PSFNA's right-of-action enforcement mechanism falls well within the *Ex Parte Young* doctrine and therefore does not violate any Eleventh Amendment principles.

PSFNA is Necessary to Support the Freedom of American Workers

This necessary legislation will help level the playing field and ensure that dedicated public employees have the ability to negotiate for fair wages, hours and working conditions; better treatment of all working Americans; and improved public services for our communities. Thank you, Chairwoman Wilson, for the opportunity to testify. I am happy to answer any questions.

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[41] *See Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 72 (1996) (clarifying further that this rule is unaffected by whether the regulation itself is within the scope of congressional authority, or if the suit is for injunctive relief or damages).

[42] *See Ex parte Young*, 209 U.S. 123 (1908) (establishing the "named administrator" exception).

[43] *See Verizon Md., Inc. v. Pub. Service Comm'n of Md.*, 535 U.S. 635, 645 (2002) (Scalia, J.) (establishing that the constitutionality of a right of action against an administrator may be determined via "straightforward inquiry" as to whether it seeks only a prospective injunction).

[44] Public Sector Freedom to Negotiate Act, H.R. [TBD], 116th Cong. § 4(c)(2)(A) (2019).

Chairwoman WILSON. Thank you so much, Mr. Paterson.

And let me welcome again, all the way from Miami, Ms. Karla Hernandez-Mats, who is the president of the United Teachers of Dade. I am so happy that she is with us today.

Under committee rule 8(a), we will now question witnesses under the 5-minute rule.

I will now yield myself 5 minutes.

Ms. Whitaker, in 2018, Florida passed House Bill 7055, an education bill containing a thinly veiled attack on teacher unions. The law represents a 180-degree reversal of Florida's past 50 years of public-sector collective bargaining law.

In 1962, Florida interpreted its constitution to provide public employees with the right to join or refrain from joining an employee organization, like a labor union, without fear of losing their jobs. And in 1968, the constitution was rewritten to explicitly include a protection for public employees' collective bargaining rights.

However, as of 2018, this right is being eroded by requiring teacher unions to report their dues-paying membership data to the State, data which is then being used to trigger elections if dues-paying membership is less than 50 percent. This reform makes no sense, creates no solution to any problem, and, instead, burdens teachers and their unions with unnecessary regulations.

In your testimony, you describe the impacts of bad legislation on teacher morale. How has H.B. 7055 impacted you and your colleagues? And how are you and other teachers resisting this targeted attack?

Ms. WHITAKER. Thank you, Chairwoman Wilson.

In our school buildings, our teachers are constantly worrying about whether or not our rights and privileges will be taken away. Our morale is already low because of the attack from our legislature, and once they started with the decertification bill, now everyone is on edge.

It has taken our union away from lobbying for our children with our school board, making sure that the items that they pass benefit all students and not just top management. Also, this legislation has provided a way to eventually take the union out of the process.

Not too long ago, they took away tenure for teachers. How can you ensure that you have an operating education system if you don't have tenure for teachers? New teachers are now coming into the system and not knowing whether or not they have a job from year to year, because each year they go back to being an annual contract teacher.

So the morale has been very low. The funding has been low from our legislature. And teachers in our union are now—we are constantly fighting that battle. And it feels as if it is us against them, and that is not how it should be. We should be working together to resolve issues.

Teachers should be at the table when legislation is proposed. And with United Teachers of Dade, they have been on the forefront because the teachers could not be there. We had to work. It was our responsibility to educate our children. That is what we are there for.

And with our children in the buildings, they are worried now whether or not they are going have teachers from year to year, be-

cause there is a major shortage in the State of Florida. Right now, we are at 2,000. And if the teachers that are close to retirement, if they retire, that number will go higher.

So that bill was basically put forth to further break United Teachers of Dade, I feel.

Chairwoman WILSON. Thank you. Thank you.

Mr. Paterson, your testimony mentioned some of the inconsistencies within the gamut of State laws that govern public employees' collective bargaining. I want you to tell us, how are these inconsistencies—how do they harm workers, and why is there a need for a Federal standard?

Mr. PATERSON. Thank you for that question.

Look, some variation State by State is healthy, and we have that. But the problem is, where States do not provide for the effective or the meaningful exercise of the right to join a union and to collectively bargain is where this bill becomes necessary.

In terms of establishing a basic floor, this bill establishes terms that have been shown to be tried and true and effective in ameliorating disruptive activity and ensuring a cooperative and productive labor relations system.

Chairwoman WILSON. Thank you.

I now recognize Ranking Member Walberg for his round of questions—the esteemed ranking member.

Mr. WALBERG. You flatter me. Thank you, Madam Chairwoman. I appreciate that, and I appreciate the panel being here today. As I said earlier, it is an important discussion.

Mr. Messenger, we would certainly, together, agree that workers should have a right to secret-ballot elections and should be free to decide for themselves whether to join and pay into a union or to share personal information with a union organizer or not.

Democrats insist these basic protections threaten the right to organize. I don't see that. They indicate that it threatens the protections to propose or deny all of them legislative protection, as well, currently pending before this committee.

However, I guess I would ask you this question. Do right-to-work, secret-ballot elections or employee privacy impact workers' rights to organize? And, second, why are these protections so important for workers?

Mr. MESSENGER. Thank you for the questions.

To answer them in reverse order, the reason they are so important is the First Amendment guarantees every individual the choice to choose with whom they associate. So the government shouldn't be in the business of forcing any individual to associate with a union or any other advocacy group against their will.

And to the extent the government does decide to force individuals to submit to monopoly representation, at the very least, it should be done pursuant to a democratic process in which the individuals are guaranteed the right to a secret-ballot vote, where they can make their choice in the privacy of a voting booth as opposed to being forced to make that choice in the presence of a union organizer.

And that goes to the second question with respect to giving out employees' confidential information. The information that some of these bills seek to require disclosure of is personal to those employ-

ees. It is personal email addresses, personal phone numbers. It is a violation of that individual employee's privacy to compel the disclosure of that information to a third party that individual may not want anything to have to do with.

And then, when you couple them together, the disclosure of information and the lack of secret-ballot protections, you are putting together a very coercive process.

Mr. WALBERG. It takes away their choice.

Dr. Onder, thanks for being here. Thanks for the work you do in the senate. Thanks for being willing to experience the impact of a judge and a court decision—

Dr. ONDER. Yes.

Mr. WALBERG [continuing]. even as on the other side with Janus, there was a court decision.

Dr. ONDER. Yes.

Mr. WALBERG. And there was disagreement, of course. There is disagreement here. And we will see how it all turns out. I personally hope it turns out well for you.

Dr. ONDER. Yes.

Mr. WALBERG. As a State legislator, we understand—at least we ought to—the primacy of the States is what makes our federalism really work. And, sadly, we have moved away from that.

The legislation that you passed requires public employers to receive annual authorization from employees before deducting union dues from their paychecks. Based on your experience, why do you think this paycheck protection provision is an important policy for workers?

Dr. ONDER. Yes, I think it is very important because workers not only make the decision whether to join or to opt out of the union but they should be able to decide whether they want their dues withheld or whether they want to opt out.

And I think what happens all too often—we know that only 5 percent, fewer than 5 percent, of Missouri government union workers have ever had a chance to vote on their union. These unions were certified as having monopoly control over workplaces decades ago.

So regularly offering employees the option to continue to have dues withheld or to potentially stop having dues withheld and leave union membership, I think that is a fundamental worker right as well, as well as the right to periodically vote whether that worker wants to continue monopoly representation by a given union in that workplace.

Mr. WALBERG. You also indicated in your legislation that collective bargaining negotiations must be open to the public. Why is that important?

Dr. ONDER. Well, because the public has an interest in what goes on in those meetings. Public money is being spent; public policy is being made right now in behind-closed-doors meetings.

And I noticed that one of these bills would actually exclude management from these negotiations and only give the final say to the governing board of that political subdivision.

So I think more transparency, more ability of the public to see how their money is being spent is important.

Mr. WALBERG. Okay.

Thank you. I yield back.

Chairwoman WILSON. Mr. Morelle.

Mr. MORELLE. Thank you, Chairman Wilson, for holding this important hearing; to all our witnesses for being here today.

In my district of Rochester and throughout all of New York State, we have long stood behind our workers' right to organize and collectively bargain. We are a union State. We understand that a strong union means effective workplace safety, higher wages, reliable benefits, and improved quality of life for all of our employees.

I saw the benefits firsthand while growing up in a union household. My dad was a proud member of the Plumbers and Pipefitters Union Local 13, United Association, and I worked to defend these rights throughout my 28 years as a member of the New York State Assembly serving as its majority leader. And I am proud to be part of this subcommittee and the majority party as we fight to protect and promote strong labor standards and the rights our workers deserve.

The Supreme Court's 2018 decision in Janus was yet another in a long history of attacks on labor unions in this country, and such decisions are consistent with the sentiments expressed by the Trump administration and what I believe is their steady campaign to undermine the ability of labor unions to collectively bargain and ensure strong labor standards, fair and livable wages, and better benefits for all employees.

My home State was one of the first to respond to Janus, in the court case, to ensure our unions and workers knew the State was behind them and giving them full-throated support.

Today's hearing, however, remains as imperative as ever. Employees in too many States across the country are robbed of the support by misleading right-to-work laws. It is our responsibility to continue the fight for workers' rights to organize and collectively bargain to ensure fairer standards for all, including taxpayers.

So I wanted to just ask you, Mr. Paterson. I would like your perspective on this. In my opinion, the diverse and divergent legal regime that currently governs State and local employees' ability to collectively bargain and join a union is insufficient, and we have seen example after example of the poor outcomes that result from the prohibition of collective bargaining.

Given what the ranking member, Mr. Walberg, said, and I have had some, as I said, a long history as a State legislator, why, in your opinion, does it fall to Congress to create a minimum standard instead of—what do you think the best argument is instead of leaving it to for essentially a State-by-State decisionmaking?

Mr. PATERSON. Thank you for that question. And the answer is really for the same reasons that 80-plus years ago, Congress enacted the Wagner Act, which is that unstable labor relations where the right of workers who organize to productively resolve their grievances and disputes and to negotiate over wages, if they aren't given that productive opportunity, it overflows into the economy.

The public sector is a huge segment of the American economy, and we have seen what happens when workers don't have a productive means of expressing that right. And we have seen a number of strikes in different States, particularly in States that don't afford a meaningful right to bargain. So we see this kind of activity

where there isn't a productive process to reach terms and conditions of employment. And so really, it is for those same reasons that this bill is necessary.

Mr. MORELLE. Thank you.

Mr. Brewer, I am just curious. I often know that people who are rank-and-file workers are those who come up with the most effective reforms about how to do things more effectively, more efficiently. In your department, for instance, how challenging is it for rank-and-file members to get their employers to consider those proposals, to really look at how do we improve the functioning of a fire department or a police department? Could you just talk about that and any experiences you might have had or that members have had?

Mr. BREWER. Absolutely. And thank you very much. To put it just bluntly, it is incredibly difficult for employees to make suggestions and have their voices heard. In my testimony, I brought up physicals. This is something that, before I was even hired on the Charlotte Fire Department, our home local, Local 660, was advocating for annual firefighter physicals, which is kind of the industry standard, and this went on for over 20 years before we finally got them.

As part of these physicals, there are some cancer tests in there, cancer detection tests. As a lot of you know, cancer has been a scourge in the fire service. From 2014 to 2016, in the Charlotte Fire Department alone, we have 41 documented cases of cancer. We had three firefighters die within a 3-month period of time. And I am not saying that these physicals would have caught them, but there is a great possibility that they would have. But if we would have had the means to simply sit down with our employer and say, hey, we want these physicals to protect our members to get these tests, it would have been a lot easier than having to go to politicians and asking them to do it.

Mr. MORELLE. Very good.

Madam Chair, thank you again for this hearing. I appreciate it very much, and I yield back my time.

Chairwoman WILSON. Thank you.

And now the distinguished Dr. Roe.

Mr. ROE. Thank you, Madam Chair. And a full disclosure. I've served as a city commissioner and mayor of my local community before I was elected. And, Mr. Brewer, thank you for your service in the Air Force.

I also want to thank the Charlotte EMT folks. I found myself one morning in the floor of the Charlotte airport doing CPR on a gentleman who had a cardiac arrest, and they were able to come and assist, and this gentleman survived and did well. So I thank you for that.

I want to get straight to some questions about secret ballot. And by the way, I am a huge fan, being the mayor, of our fire and police department. In Tennessee where I am in our local community in Johnson City, we have an NSO rating of one. We do not have a—we are not unionized there, and our police officers—I had to put on a scrub suit to go to work every day. They had to put on a Kevlar vest. And I have incredible respect. And EMTs I worked with as a physician in my local community, and I've seen that serv-

ice improve dramatically across the country from when I started the practice of medicine. So I want to just say that personally.

I have a very strong feeling. I put on a uniform and left this country to go to Southeast Asia over 40 years ago to protect your right to have a secret ballot. I think it is one of the most sacrosanct rights we have in America is to be able to go behind a screen, and I say this as a joke, and people, many have heard it. I don't even know whether my wife votes for me or not, because it is a secret ballot. I think it is that important.

And I found it hypocritical that when we developed the USMCA, that we had people on this committee right here insist that part of the MCA agreement that workers in Mexico had a right to a secret ballot, which I totally agree with, but we are trying to take that right away from an American citizen. I don't understand that.

And I would like anyone, Mr. Paterson or anybody, to answer why you don't think a secret ballot is a good idea when I go to vote. For me, every person on this dais was elected by a secret ballot.

Mr. PATERSON. Well, the act that is under consideration does provide for secret ballots, and it also allows States to have laws which afford voluntary recognition on the basis of the majority showing of interest.

Mr. ROE. You would support a secret ballot in union elections, then, across the board?

Mr. PATERSON. I would support employee free choice if that free choice is exercised in a manner that is not coercive and it meets the same requirements that public elections in this country—

Mr. ROE. The way you have a noncoercive—the way it is noncoercive is you pull the curtain and you get to vote in a secret ballot. That is the way. And, look, if you want to have a union, you should be able to vote for it and have it if you want to. If not, the people who are in that—and the other one, I would like to have a question. Mr. Messenger, you may know this. What happened in—because I don't. What happened in Wisconsin when the laws were changed there, and the Governor there changed the law? There was a lot of turmoil about whether you had to pay or not to be in a union. Did people opt out or did they stay in? Did they see value from their membership, I guess, is what I am asking?

Mr. MESSENGER. A large number of employees decided to drop out once they had the opportunity to actually make that choice. Prior to Act 10, and it was also prior to Janus, you know, employees in Wisconsin didn't have a choice of whether or not they wanted to support a union. Once they were given that choice, a large number decided to opt out. Now, some decided to stay. That is also their free choice, but the most important thing is that each individual was allowed to choose.

And if I could also go back to answer your first question with respect to secret ballot elections. You know, another important part of a secret ballot is that the result is respected of that election. Under H.R. 2474, the PRO Act, it gives the NLRB the authority, if employees vote against union representation, to overturn that result if the NLRB believes it doesn't reflect employee free choice, and impose the union on those employees that they just rejected.

And so I think that the PRO Act, you know, in that way, even though employees were given the right to vote, it means little if their voice isn't ultimately respected.

Mr. ROE. Dr. Onder, and not only do States and local governments have ideological preferences, they also have unique needs when it comes to prioritization budgeting, as I know and you know as a State legislator, and other decisions governments make. Based on your experience as a legislator, why is flexibility important for State and local lawmakers, and what impact would the bills before us today have on the flexibility of that State and local governments they currently enjoy to make important financial decisions?

Dr. ONDER. Yes. It is the very essence of our system of democratic governance that we elect officials who then make decisions. The people exercise their sovereignty through their elected officials. And when that sovereignty is replaced by behind closed-door negotiations between politicians and union officials, that violates that sovereignty, and that is very important.

And I agree with you on secret ballots. Voluntary recognition with a card check, voluntary showing of recognition and, of course, those cards are obtained out in the open with a union organizer pressuring employees to sign them, that is the very antithesis of the principle of the secret ballot.

Mr. ROE. Thank you, Madam Chair. I yield back.

Chairwoman WILSON. Mr. Courtney of Connecticut.

Mr. COURTNEY. Thank you, Madam Chairwoman. And thank you to all the witnesses for being here today.

Mr. Brewer, I just want to sort of foot stomp a point you made in your testimony about a practical public benefit of collective bargaining which is the apparatus staffing that you described where only two are—again, the system that you have in the area that you are working. As a member of an international, I mean, you are obviously able to compare notes with other jurisdictions that do have collective bargaining where issues like staffing actually are negotiated. And maybe if you could just sort of describe that sort of side by side of, you know, colleagues that are in States that recognize collective bargaining and the benefits to the public of adequate staffing versus nonunion jurisdictions like your own where it sounds like you almost have to wait for another vehicle or truck to show up before you can actually start doing your job.

Mr. BREWER. Yes. Thank you. Yes, absolutely. We do have communities in North Carolina that are severely understaffed, places like Boone, North Carolina, for example, you know, where there is a major university. They will have trucks with two individuals, with two firefighters on those trucks, and it has, you know, the possibility to hinder operations.

Studies show, for example, that four-person CPR is the most effective. When it comes to fighting fire, there is like a two-in, two-out rule. And, you know, if you show up with just two people on an apparatus and the house is burning, they will have no means to go in until another apparatus arrives.

And so what we believe is, with this legislation, we would be able to sit down with our employer, and again, not just the safety of the firefighters, because it does put firefighters at risk, we are talking

about the safety of the citizens to talk about that safety for adequate staffing.

Mr. COURTNEY. Thank you.

Professor Slater, Mr. Messenger in his remarks described that the legislation we are considering today runs afoul of the 10th Amendment. I am sure this is something that you have thought about and possibly written about. I was wondering if you could comment on that constitutional issue.

Mr. SLATER. Well, there are two issues involved here. The first is the straight 10th Amendment issue. When Congress extended employment laws such as the Fair Labor Standards Act and various antidiscrimination laws to public employees, there was a brief dispute in the courts in the 1970's and 1980's about whether the 10th Amendment barred that. But ever since I was in law school, which was a long time ago, the courts have rejected 10th Amendment claims. The Fair Labor Standards Act, antidiscrimination laws apply to public employees as well as private employees.

There is an 11th Amendment issue coming from the case of Alden v. Maine that would only apply to State employees where States have limited immunity for private suits for money damages, but that wouldn't be a problem under this law because it is enforced by a Federal agency, the Federal Labor Relations Authority.

Mr. COURTNEY. Great. Thank you for clarifying that point.

And, Mr. Paterson, again, we heard about Wisconsin's experience after it changed its labor laws. The fact of the matter is the Bureau of Labor Statistics in January reported that union membership among State and local government employees actually held steady in the wake of Janus. I was wondering if you could comment on that and, you know, in terms of obviously you are a union that is all across the country in terms of what you are seeing. Also, in terms of what we are seeing in terms of efforts in the wake of Janus to, again, get folks to opt out and yet, nonetheless, the statistics are showing that it has actually held quite steady.

Mr. PATERSON. Yes, you are right. And I understood that to be sort of two questions, so let me try to take them in reverse order.

There are currently dozens of corporate finance groups that have committed to spending $40 million to $50 million in campaigns to try to dissuade public sector workers to quit their union. These are glossy brochures that say things like quit your union, lose nothing. The union still has to represent you. This is quite literally the message they are sending, and it hasn't worked.

Why hasn't it worked? Because members know when they are being sold a bill of goods. They know what is at stake. Our members know that their union is just that. It is their union, and if they quit it, they know what they lose. And so these campaigns just haven't worked. They have fallen flat.

And some are really gimmicky, like, this actually happened. One of these corporate-backed operatives was dressed like Santa Claus handing out union resignation letters around Christmas saying give yourself a pay raise. Those kinds of things don't work with our members, because the most powerful thing is an educated, empowered worker, and that is what unions do.

Mr. COURTNEY. Thank you, Madam Chairwoman. I yield back.

Chairwoman WILSON. Thank you.

Mr. Allen of Georgia.

Mr. ALLEN. Thank you, Madam Chairwoman. And again, this is a great debate that we are having here today.

You know, after hearing in this Congress my friends on the other side of the aisle continue to promote this Federal one-size-fits-all policy on States and localities, and this hearing today seems not to be an exception to that. Of course, we have talked about the Supreme Court decision last year which righted the ship as far as a significant win for workers rights and the First Amendment. Based on what I have studied, the PRO Act would undermine the rights of workers in States.

In my State of Georgia, we have been named the best State to do business for 6 years running. We are a right-to-work State, and of course, the reason that our business and our economy is growing is that the first priority of every business, public or private, is a skilled work force.

Yes, there are many unions working in the State of Georgia. In fact, I at one time was a part of one of those, but however, the people in Georgia want a choice, and that is the reason our laws are written the way they are.

And Mr. Messenger, the Supreme Court held decades ago that workers cannot be required to pay a political portion of union dues. As far as the H.R. 2474 is concerned, it would ban State right-to-work laws, forcing millions of private sector employees to pay union dues or lose their job.

Are private sector unions' dues being used for political purposes and speech to accomplish just that very thing?

Mr. MESSENGER. Yes, I believe that they are. A portion of union dues, even in the private sector, are used for political expenses. Employees do have some rights to object to paying for that political portion. However, private sector employees, absent a right-to-work law, can be forced to support other union speech and advocacy. For example, their speech vis-&-vis their employer. And as you mentioned, H.R. 2474 would strip employees of their right-to-work protections, such as in Georgia, and allow unions to force them to pay fees as a condition of their employment.

Mr. ALLEN. Currently, we have—and, you know, this, I guess, could be debated, but obviously the economy is doing well, and I think it is the best in the world. You know, we have got more jobs than we have got job seekers, and of course, that is why we have teacher shortages. That is why we are looking for people to work in the public sector and private areas. But the thing that—one of the concerns that I have is that union leadership in the public and private sector alike have a long history of corruption, embezzlement, and other wrongdoings when they are left unaccountable to rank-and-file workers.

And, in fact, I looked it up. For the record, about $16 million went to Members of Congress from public sector—political contributions, public sector unions. Ninety percent went to one specific party.

And so, Mr. Messenger, did any public sector bills being discussed today help prevent instances of fraud and corruption that might go on that—you know, here we are talking about the taxpayers, okay. I represent the taxpayers. And what do you see out

there as far as instances of government and union corruption negatively impacting our taxpayers?

Mr. MESSENGER. Yes. I didn't see anything in H.R. 2474 that would prevent union corruption. In fact, by reinstituting forced fee requirements and overriding State right-to-work laws, H.R. 2474 would facilitate that kind of corruption. Because when employees have the choice to decide whether or not to support a union, they can hold the union and its leadership accountable by withdrawing their financial support if the union is mismanaging the assets. However—

Mr. ALLEN. The State senator wanted to say something, and I have got 5 seconds. Go ahead, sir.

Dr. ONDER. That is an excellent point. And when corruption is uncovered, it is because of Federal LM reporting requirements in the private sector. Most States do not have the equivalent in the public sector.

Mr. ALLEN. Thank you very much. I am sorry. Out of time. I yield back.

Chairwoman WILSON. Thank you.

Ms. Fudge of Ohio, with the red scarf.

Ms. FUDGE. Thank you very much, Madam Chair. I thought you were going to introduce me as distinguished too. So let me see if I can distinguish myself today.

It is just so pleasant to hear my colleague, Mr. Allen, talk about—

Chairwoman WILSON. Prestigious.

Ms. FUDGE [continuing]. supporting choice. I hope maybe 1 day you all will support a woman's right to choose what she wants to do with her own body.

Mr. Paterson, so happy to see you here. You know, my mother is a retiree of AFSCME. She is still very, very involved in her union. And I grew up in a household that made me know early on what unions can do for people, so thank you for being here.

Ms. Whitaker, it is a pleasure to meet you as well. I understand you are one of my sorority sisters, so welcome.

I have a question for you, Ms. Whitaker. We are in the midst of a national teacher shortage. We have lost more than 26,000 just African American teachers over the last 8 to 10 years. Can you tell me why you think that is happening? I mean, I understand we have got some poor working conditions and low pay, but tell me why you think that is happening.

Ms. WHITAKER. We tend to lose African American teachers yearly. The main reason African American teachers are not staying, not just the pay, the working conditions. If you are not afforded the proper books, the materials that you would need to educate your children, and pay, it makes for a rough day. Our children need to see African Americans in the classroom.

Also, we need male teachers, African American male teachers. Every male in here would like to be able to provide for his family. And males, they are not coming. If they come, they are only there for a short period of time. So in Miami, you can barely afford to live where you work.

Ms. FUDGE. Well, is it true that one in five teachers have a second job?

Ms. WHITAKER. Yes, ma'am, we do.

Ms. FUDGE. So the economy is not as great as they say?

Ms. WHITAKER. No, it is not.

Ms. FUDGE. Let me ask you a question, Mr. Slater. Last year's teachers' strikes marked a four-decade high in strikes in the United States, and most of them occurred in States where collective bargaining rights were not there to protect teachers. Can you tell me why this was inevitable, where we find ourselves today?

Mr. SLATER. From the 1960's through the present, the one thing that we know from experience is that strikes in the public sector are most common where there are no collective bargaining rights for public workers. And as you say, that was true in almost all or essentially all the States where there were teacher strikes last year.

The reason is that workers feel, often justifiably, that they have no other options to get their employer to listen to their concerns, to really take them under consideration.

In contrast, in my State of Ohio, which not only grants—in your State of Ohio, which not only grants collective bargaining rights to teachers but permits them to strike in some circumstances, there are very few teacher strikes. There is an average, as I am sure you know, of about one strike in all the public sector every year in Ohio because there are alternatives. There is fact finding. There is mediation. There is what we call interest arbitration. There are realistic alternatives where workers can feel they can get their voices heard in these States, unlike States without collective bargaining rights where strikes are, unfortunately, a frequent last resort.

Ms. FUDGE. Thank you. It seems to me, as I have listened to the testimony, that those who find themselves not able to be protected by unions find their jobs much more difficult, and even some of them who are that are in States that do not support and believe in the fundamental right to collectively bargain, they are being mistreated in ways that we have been looking at for many, many, many years.

People know that it is labor unions who created the middle class in this country. That is why we have a 5-day workweek. That is why we have sick time, paid sick time, vacation time, because of labor.

So what I am hearing from my colleagues is that they don't want any of that. You know, they just want to save money instead of deal with people. Money is not everything, but clearly, if we can't pay our teachers who teach our children a decent wage, there is something wrong in this country. So that is just my point of view.

I hope I have distinguished myself, Madam Chair. I yield back.

Chairwoman WILSON. You did with putting on that red scarf. Thank you. We wear red on Wednesdays for the Chibok girls, and that is why you see red on the audience, and even Mr. Walberg wears red every Wednesday. You see him? The distinguished Mr. Walberg. Thank you so much.

And now, Mr. Banks of Indiana.

Mr. BANKS. Thank you, Madam Chair.

As one of the co-authors of the Indiana right-to-work law, I have had some experience with this particular topic, and I just want to

note today how radical some of these proposals are that we are debating.

Democrats are seeking to impose their will on the American people by subverting the collective bargaining laws passed by their own State governments. I want to make something very clear. Washington, DC, has no business telling Hoosiers how to run their own State government.

Indiana's collective bargaining rules have been in place since 2005, and we have been a right-to-work State since 2012. The choice of whether to change those laws rests with Hoosier voters, not the Democrats on this committee.

Senator Onder, I want to start with you, and I want to commend you for the work that you have done on this particular issue in Missouri. Could you talk for a minute about how the Federal Government takeover of collective bargaining rules would specifically hurt your State? And specifically, can you talk for a little bit about how it would undermine workers' rights regarding agency fees and transparency of union expenditures?

Dr. ONDER. Yes. I think that is a very good point. And what I would add is not only would these two bills undermine the principle of federalism, the right of States, Indiana, Missouri, to set their own public sector labor policy, but even undermine the ability of political subdivisions, school boards and fire boards and cities and counties, to negotiate with their workers and set their labor policies.

But I think that transparency is extraordinarily important. When we have uncovered instances of union misuse of fees and corruption, it has almost always been in the private sector because of Federal LM reporting that has been required since 1959 in the private sector union arena. So that is why House Bill 1413 in Missouri required that similar disclosure of the use of union dues.

We also in 1413 extended to workers the right to vote whether or not they want to be part of a monopoly representation work force controlled by unions. Not every worker wants that. Some of the testimony by some of the witnesses alluded to the political activity of their various unions. Not all workers want to be part of that political activity.

So these bills are a massive Federal overreach. They are a huge violation of the parent principle of federalism. And, you know, I commend your work in Indiana and on this committee in fighting for the rights of States and of the people expressed through their elected officials.

Mr. BANKS. Thank you for that.

Mr. Messenger, the recent Janus decision allowed government workers in non-right-to-work States to opt out of forced union dues. Is there any data on how many workers in those States have actually chosen to not pay those agency fees?

Mr. MESSENGER. Well, we know one thing is that all the forced fee payers, which were individuals who were not union members who were being forced to pay these compulsory fees against their will, were almost all entirely freed in the wake of Janus, because Janus was unequivocal that the government could not take these individuals' money for union fees without their affirmative consent.

But the next question becomes how many individuals who are union members because they now have the right to choose whether to support a union decided to drop out? And the numbers on that are still really undetermined. They are just rolling in. Tomorrow is the 1-year anniversary of Janus, so there are really not hard numbers yet on how many exercised that choice.

But I want to emphasize, the most important thing isn't how many exercised that choice to be union members or nonmembers, but the fact they have that choice. You know, prior to Janus, they didn't have the right to choose whether to support a union. The government and union officials forced them whether they wanted to or not, and now they have that choice. And even if few exercise it, it is still a very important principle.

Mr. BANKS. Thank you for that.

With that, I will yield back.

Chairwoman WILSON. Thank you.

And now, Dr. Shalala of Florida, former Secretary of HHS.

Ms. SHALALA. Thank you very much, Madam Chair. I did wear red today, I want to point out.

Mr. Paterson, we are having a debate about federalism. This, in fact, is a debate about federalism. I agree with my colleagues. But federalism also allows us as Members of Congress to identify when there is a national interest in minimum standards and human rights, for example, in civil rights. And it is a debate about how workers ought to be treated and what are the mechanism by which they will get fair treatment.

So could you talk a little about what is the national interest that justifies the kind of legislation that we are talking about?

Mr. PATERSON. Yes, I would be happy to, and I think it touches on what I was saying before about how it is the same interest for which Congress passed the National Labor Relations Act. And this bill is not unique in the sense that Congress would be enacting provisions governing employer and employee relations and terms in public employment. There is a litany of examples where Congress has done that, and it has worked well, and also in conformity with principles of federalism.

So I mean, I could rattle off a number of acts like the Fair Labor Standards Act or the ADA. The ADA actually requires public employers to sit down and engage in a collaborative process with employees to reach accommodations when they have disabilities. So that is one example where Congress has found that the Commerce Clause authority is significant, and the effects on commerce are significant enough to establish a minimum standard.

The Pregnancy Discrimination Act, the Equal Pay Act. Recently in 2008, the GINA, the Genetic Information Nondisclosure Act. USERRA which governs our veterans. So important to preserve their rights in terms of their employment relations in State and local employment.

This act that is before you today is just one example of the many ways in which the recognition of this important sector of the economy should be leveled and should have a level standard that applies to all public servants, whether they are a nurse in a hospital or working in a correctional facility or any number of occupations

and industries that have a very important effect on commerce and are actually integral to the fabric of our economy.

Ms. SHALALA. Thank you.

I want to welcome Tina Whitaker from Miami, Florida. We are happy to have you here.

Collective bargaining helps, not just the teachers and students, but also the whole community. Could you talk a little about your experience with UTD, how having a union supported your school's broader Miami-Dade community?

Ms. WHITAKER. As a union, we are all over Miami-Dade County. We are in our communities. We are not just a union within our school building or at a headquarters at United Teachers of Dade. Our communities see us there. They call and we are there. We are at book fairs, parades. We are at community events where our children are. We are at churches. A lot of us do attend our churches and synagogues, so they see us often. Even when there was a government shutdown, United Teachers of Dade was there for the community.

We are not a selfish union. We provide school supplies for those students that cannot afford them. Even the pre-K teachers. We provide school supplies for them, because unfortunately, the funding that the teachers are given for supplies, the pre-K teachers are not included.

United Teachers of Dade, we are a family, and we look out for our community. We are out there. Yes, we do advocacy and activism, but that is what you are supposed to do. You are supposed to look out for those that are next door to you, regardless of whether you are a teacher, a firefighter, a professor, a Senator, a Congress person. You are supposed to look out for the people that are in your community.

I always tell my students, learn to lobby for yourself. Learn to advocate for you. And I always tell them—I said, listen, I start my year out, and I want you to be able to understand. I go back to when I have to teach the Holocaust, but I would start early. When they came for the socialists, I said nothing. When they came for the trade unionists, I said nothing. When they came for me, no one was there to speak for me.

United Teachers of Dade, we speak for our community, not just the teachers, but we are there for everyone in our community.

Ms. SHALALA. Thank you very much. I yield back.

Chairwoman WILSON. Thank you.

And now, Mr.—or Dr. Foxx, our ranking member of the entire committee.

Ms. FOXX. Thank you, Madam Chairwoman. I want to thank our witnesses all for being here today.

Mr. Messenger, Democrats' labor agenda this Congress has been about imposing the will of union bosses on unwitting States, employers, employees, and others in order to reverse the decades-long decline in union membership. Why might it be in the interest of union bosses to undermine right to work, secret ballots, and employee privacy? How do these proposals relate to the original intent of the National Labor Relations Act?

Mr. MESSENGER. Well, all three of those issues, the compulsory unionism with compulsory fees, the taking away of the secret ballot

election, and the disclosure of private information, are all intended to facilitate allowing union officials to exert their power over individuals who may not want to associate with that union. And it perverts the original intent of the National Labor Relations Act or of the—as amended by the Taft-Hartley Act, I should say, which was to facilitate employee free choice, not to have a one-sided, pro-union type agenda. In fact, you could see that through the legislative history.

When it was originally enacted, the National Labor Relations Act was rather one-sided, but Congress corrected that in 1947 with the Taft-Hartley Act to provide that employees have the right to refrain from supporting a union and to protect them from unfair labor practices caused by union and union officials. And so there is some balance at present within the structure of the National Labor Relations Act. But bills, you know, like the PRO Act, are meant to upset that balance and very much skew things back against individual employers.

Ms. FOXX. Thank you. That is the way it seems to us, and we appreciate your point of view.

Dr. or Senator Onder, thank you for being here. I would say you are a good example of what Ms. Whitaker says about giving back to the community.

Dr. ONDER. Thank you.

Ms. FOXX. Thank you very much. My home State of North Carolina is one of just three States that has no government union collective bargaining. It is also one of the fiscally healthiest States in the country, as evidenced by several massive revenue surpluses in recent years.

Based on your experience as a State lawmaker, do you believe North Carolina's fiscal strength can be tied to the absence of collective bargaining in government? How might imposing government union collective bargaining in North Carolina risk the State's fiscal condition?

Dr. ONDER. Well, a very good question. I think it very well may. And conversely, I think the poor fiscal health of some other States, Connecticut, Illinois, New Jersey, California, can be traced to the collective bargaining agreements that have been reached over the years between government and unions.

If we look at pension liabilities, in New Jersey, every man, woman, and child in the State of New Jersey owes $26,000. If we look at Connecticut, $33,000. And those pension liabilities are the product of decades of negotiations between public sector collective bargaining, representatives, and politicians.

Now, I am not here today to say that the Federal Government should preempt all that. I believe New Jersey and Connecticut and California and Illinois have to get their own house in order, but I am saying quite the opposite; that it is up to North Carolina, to Missouri, to Georgia to decide what we want our public sector policy to be that is important to the principle of federalism and even to the sovereignty of the voters who elect us.

Ms. FOXX. Thank you.

Mr. Messenger, Democrats seek to impose binding arbitration on both public and private sector collective bargaining negotiations, essentially empowering unaccountable bureaucrats to determine

workers' contracts and employers' costs. What problems might this create for employers' financial stability as well as the unique needs of employees?

Mr. MESSENGER. Well, there are two issues, the first of which is that, you know, going through the binding interest arbitration process could result in terms that are disastrous for the employer. Under current collective bargaining law, an employer does not have to agree to any particular terms. It has to bargain to impasse but doesn't have to agree to them. If you go to binding arbitration, suddenly the arbitrator is in control of importing company policies that may control the fate of that company. And also, binding arbitration may upset the constitutional basis on which the National Labor Relations Act was upheld.

When it was originally passed, one of the reasons it survived constitutional challenge is because it didn't force employers to enter into agreements with unions that bind their employees. The arbitration would, of course, change that and potentially open the act up to legal challenge.

Ms. FOXX. Thank you very much.

And thank you, Madam Chairman. I yield back.

Chairwoman WILSON. Thank you very much.

Mr. Levin from Michigan.

Mr. LEVIN. Thank you so much, Madam Chairwoman. Thanks for having this important, important hearing.

I want to start by just going to much more fundamentals than we have talked about. All this talk about compulsory, mandatory unionism, which simply means when workers as a group choose to form a union, it binds the group. Like many other democratic decisions, this horrifies Mr. Messenger, who is part of an industry that seeks to do nothing other than destroy collective bargaining in the United States.

The United States is not in compliance with fundamental international human rights norms when workers like Ms. Whitaker and Mr. Brewer do not have the freedom of association at work. ILO conventions, 1987 and 1998, which, to our shame, the United States has not ratified, require all workers in society, including public sector workers, to have the freedom of association. It is a fundamental human right which is denied.

The idea that we are having this hearing and having people and the minority talk about how great it is that we are denying a fundamental human right to millions of American workers is not something that would happen in virtually any other country in the world. In the world. And it is a shame on our country that we are even having this discussion.

And I am here to get us there, somehow to get this country to the point where we recognize workers' rights to have freedom of association at work, to get the kind of basic things that Mr. Brewer has talked about: Safety for firefighters, effectiveness for firefighters, basic rights for teachers in Florida and other States.

I want to ask you a couple questions, Dr. Slater, about the laws that States have been passing to make it harder and harder for workers to organize at the State and local level. Some States have required, for example, periodic decertification elections. I don't see them requiring election—you know, procedures for businesses to be

able to, you know, destroy their local chamber of commerce or something. It is just unique anti-unionism in this country in the public sector.

But I want to have you explain how these laws are designed to undermine unions and whether they also have the effect of undermining or hurting government operations.

Mr. SLATER. Yes. Well, two things in response. First, you are absolutely right that the United States is in violation of the United Nations Universal Declaration of Human Rights and International Labor Organization Declaration of Fundamental Principles and Rights at Work in terms of collective bargaining for all employees, including public employees, being a fundamental human right. In fact, both Human Rights Watch and Amnesty International have Stated that U.S. laws in this area and some States violate international law.

As for the decertification laws, a few States, Wisconsin and Iowa that I can think of off the top of my head, you talked earlier about Florida, mandatory recertification elections every year whether anybody wants it or not. The way labor law has traditionally worked, both in the public and private sectors in this country, is you have—you can have recertification elections maybe every three—at a minimum, every 3 years if 30 percent of the workers want it. And that is still true in all the States that provide collective bargaining laws. These States that require mandatory recertification laws, whether no one wants it or not, it is clearly an attempt to destabilize labor relations.

Unions have to constantly be in a reelection mode whether anybody wants them to be or not. Employers don't know how long they have to sign a contract for. Employees don't know what their rights and wages and obligations will be at work. The average union contract lasts about 3 years. That provides for stability and predictability for both parties. I don't think any of the Governors who signed these laws into effect would want themselves to be up for reelection every single year because that would create political instability. Same thing for unions.

Mr. LEVIN. Thank you. And how has the broader attack on basic rights of public sector workers to have collective bargaining affected the operations of local or State governments?

Mr. SLATER. It has destabilized them. It has created a lot of people who have left public employment. In Wisconsin, for example, there is a lot of people who fled public employment. And more generally, weakening unions increases wage inequality.

Mr. LEVIN. Thank you.

And my time has expired, Madam Chairwoman. I just want to thank you again for your tremendous leadership in this effort, and emphasize the need for us to pass these bills. Thanks, and I yield back.

Chairwoman WILSON. Thank you. Thank you so much.

Mr. Wright from Texas.

Mr. WRIGHT. Thank you.

Mr. Messenger, are you horrified, because you don't look horrified to me?

Mr. MESSENGER. I am not, sir.

Mr. WRIGHT. I didn't think so.

I am glad that we are discussing fundamental rights because, to me, the right to work is rather fundamental. And other fundamental rights are enshrined in the Bill of Rights, one of which includes the 10th Amendment. And that is a very important amendment. A lot of people want to ignore it, but it is there for a very important reason.

And when the Constitution was written, Mr. Messenger, correct me if I'm wrong, wasn't it the States that created the Federal Government, or was it the other way around?

Mr. MESSENGER. States created the Federal Government.

Mr. WRIGHT. And that is why we have a 10th Amendment, isn't it?

Mr. MESSENGER. Yes.

Mr. WRIGHT. I am from Arlington, Texas, and I used to serve on the city council there for 8 years. And Texas, of course, is a right-to-work State. It is one of the fastest growing States, and people, workers, and companies, are literally flocking to Texas, and have been for 20 years, from overregulated States, and they are doing that for a reason. That is because we still have freedom and opportunity in Texas, partly because we are a right-to-work State.

Now, when I was on the city council, we had a very robust police association, firefighter association, and the city council worked with them routinely. And if they wanted something and the council didn't give it to them, they could go to the people. They could go to the people. And if they could get a petition to put something on the ballot, they could, and they did, and succeeded.

Also, after I was on the city council, I was a county official, Tarrant County, which is the 15th largest county in America. It is large. A lot of employees. It is also one of the highest paid of any county in Texas. Tarrant County pays its workers higher than other urban counties in Texas that are larger.

Now, Tarrant County, by the way, is majority Republican on commissioner's court. They are the ones that decide what the budget is and how much people are going to be paid. And our workers get paid more than like Dallas County, which is controlled by Democrats, Bexar County, which is controlled by Democrats, and I can go on and on.

My point is this: This notion that there has to be collective bargaining or workers aren't going to be paid enough or workers are going to be underpaid compared to everybody else is absolute nonsense, at least in Texas. That is not true at all. And we are a right-to-work State, and it works.

I wanted to ask you, Senator, do you see the same kind of results in Missouri?

Dr. ONDER. Yes, we do. And in fact, in Missouri, we have had public sector collective bargaining since 1965, but for police and teachers, we have only had it since 2007. And in between police and teachers, Fraternal Order of Police, the Missouri State Teachers Association, would get together and meet and confer sessions with management, with the local political subdivision leaders, and the system worked well. We didn't have this one-size-fit-all federally mandated regime that these two bills advocate.

So, yes, I agree with you that labor and management can work together without imposing a Federal structure on our cities and our counties and our school boards.

Mr. WRIGHT. Right. Thank you. I think what is before us today does not expand freedom or opportunity. In fact, I think it is horribly oppressive on the States.

And I am going to yield the remainder of my time to the ranking member.

Mr. WALBERG. I thank the gentleman. And I thank you for your history lesson there of Texas.

Mr. Messenger, one of the reforms included in Missouri's collective bargaining reform is a requirement that unions stand for periodic recertification elections, as we have talked about. To your knowledge, does any such requirement currently exist for private sector workers under NLRA?

Mr. MESSENGER. It does not exist. In fact, most private sector workers have never had the opportunity to vote on union representation. I believe a recent study showed that over 90 percent have actually never voted for the union that currently represented them because the union was voted in or card checked in many, many years ago, sometimes even decades ago, and there has never been an election. Because under the National Labor Relations Act, unless employees can affirmatively put together a 30 percent petition within a very narrow period of time, they are precluded from demanding an election. And there is a variety of tactics that are used such as merging bargaining units and such that make it extremely difficult for employees to decertify, making the need for recertification elections that much more apparent.

Mr. WALBERG. I thank you, and yield back to Mr. Wright.

Mr. WRIGHT. I yield back.

Chairwoman WILSON. Thank you.

Mr. Norcross from New Jersey.

Mr. NORCROSS. Thank you.

I heard when I was out of the room that my State was garnering some attention. We are rather unique. We have something called public officials with a union label. We have members, rank-and-file members from different parts of the State who have run for public office. See, we think it is a good idea to have somebody who understands day in and day out what the average worker goes through. Because one thing we understand, if you are not at the table, you are on the menu.

And the suggestions that I have heard today certainly make that absolutely clear. I hear about strikes and shutdowns that if public employees had more power would happen. If I recall correctly, didn't we sort of have a strike here when we shut down government? That is a different story. We will leave that for another day.

Certainly, the recertification—let's be clear here. You can decertify a union. That is available to any member at any day by putting that together, so don't confuse the issues here by talking about that. It is about balance. It is about fairness. You don't want it one side or the other. You want a cooperative working relationship, something we certainly could use here in Congress, that at the end of the day, when you have those discussions, it becomes a better workplace.

In my career prior to coming here to Washington, I was an electrician, construction electrician, and one of the most important things in collective bargaining is safety. Safety on the job. During my period of working out in the field, I experienced three horrible days when somebody on my job was killed. Something you will never forget.

So when they talk about overreach of government, OSHA has saved thousands of lives, or in the State they called it POSHA. That is the sort of regulation that you want, that you work together. And quite often as part of the collective bargaining agreement are those safety committees that are put together.

But it is the bargaining table where this should take place. The idea of allowing the States to have the same set of basic foundation for those employees who want—it is their choice if they want to join a union. But when they don't have the fundamental right to do it, that is where we are having a problem.

So, Mr. Paterson, I have seen and I have talked about the failure to protect workers. Talk to me about those safety conditions that might be talked about or written into a collective bargaining agreement and how there is either an advantage or disadvantage for doing that.

Mr. PATERSON. Health and safety. When you talk to workers about one of their most pressing concerns, the answer is—often health and safety is at the top of the list. And frankly, workers are the people who know what the risks are, and they know what can be done to mitigate or eliminate those risks. And frankly, they are the ones that suffer if that is not done.

The process of collective bargaining has and does and has always included bargaining over safety standards and protocols and the give-and-take of ensuring the employer commits adequate resources to ensuring worker safety. And not just worker safety but the safety of customers and other people who might be on the job site.

When collective bargaining laws are eliminated or at least dramatically curtailed like, for instance, in Iowa recently, then workers and their unions do not have that ability, and things can quickly go by the wayside. After the Iowa law, HF 291 was passed, sometime after that, we had a member who was actually—Tina Suckow, who was actually a mental health hospital worker in Independence, Iowa, was injured severely on the job by one of the patients in that facility who was having an episode. And the reason is because the safety harness was new and was not one that the workers had sufficient training in, and she was hospitalized.

But what is worse than that is that, not only was she hospitalized as a result of this extremely dire physical attack, was that while in the hospital, she used all her leave, and the employer fired her. Now, if we had still had robust collective bargaining rights in Iowa, then the union could have negotiated over the leave. The employees could have gotten together and pooled their leave so that she would have the leave to get well, and they could have grieved her discipline. But all of these basic fundamental collective bargaining rights were eliminated.

Thank you.

Mr. NORCROSS. We are running out of time. Again, I want to thank the committee for putting this hearing together. Together, working together in a cooperative relationship, we really can get this done.

Chairwoman WILSON. Thank you, Mr. Norcross.

And now, Ms. Underwood of Illinois.

Ms. UNDERWOOD. Thank you, Madam Chair.

I am so pleased that we are having this hearing today. You know, Janus was an Illinois case, and so this is particularly important to many of my constituents.

I am also pleased that Ms. Whitaker is here. I thank you for your many years of service to the children in your community. And we have talked with the Illinois Federation of Teachers and our friends at AFSCME Council 31 to prepare for the hearing today, and so I am just really delighted.

You know, part of the benefits of union membership are ensuring that we have equal pay. And one of the things that we did at the beginning of this Congress was, on this committee, was we passed the Paycheck Fairness Act. And when we think about equal pay for all workers, workers of color, for women, unions have led the way and particularly in the public sector. And so I think it is critically important to reference the historic leadership role that public sector unions have played with respect to paycheck fairness and equal pay.

My question is for Mr. Brewer and Mr. Paterson. It is related to public health. I am a nurse, and I spent my career as a public health nurse working to expand coverage around the country. And so what would you say to those who argue that unionization of public safety officials and firefighters would have an adverse impact on public health?

Mr. PATERSON. Well, I will address the nurses. You can address the firefighters. Thank you.

Look, there is a tremendous amount of research done by higher education institutions in the nursing field, by epidemiologists, by sociologists, by public health experts, that shows where nurses have a voice on the job and have a representative who can amplify that voice and bring that voice to the bargaining table, that patient outcomes improve. And I could go on, but the evidence is out there and it is a clear dynamic. And so collective bargaining improves, not only working conditions, but patient outcomes in that field.

Ms. UNDERWOOD. Thank you.

Mr. Brewer.

Mr. BREWER. And I would add to that, as our jobs as firefighters have evolved over the years, you know, we are at the point now where not only are you fighting fires, responding to national—natural disasters, we are also medics and we are EMTs. So any time there is a car accident, any time an ambulance is dispatched somewhere, firefighters are responding.

You know, we work with different agencies to show the effectiveness of four-person CPR. You know, so when you look at the save rates at places like Charlotte—and it was even brought up here today—you know, those studies show that where the union is involved and where we can advocate for these things, where we can advocate for, you know, four on a truck, you know, for four-person

CPR, for car accidents where we are going to have to do patient care and extrication at the same time, all of this has a major impact on the public and the public health.

Ms. UNDERWOOD. And when we think about current priorities and challenges that we struggle with as a Nation, like the opioid epidemic, all right, we know that many of our firefighters are on the front line in every community in this country combating, and I know that your union has been active in preparing your members for responding to that public health emergency. Would you like to speak on that?

Mr. BREWER. Absolutely, yes. And a lot of times, a lot of these conversations today we have centered around pay in that we are going to bargain for pay, but we bargain for a lot more than pay. It is about health and safety. It is about how can we provide better care for the public, how can we provide better care for our members.

And, you know, the opioid epidemic, we have done numerous public announcements, training at a lot of our conferences and stuff, and then we take that back from the international and, you know, disperse it at a State level and on a local level. So, you know, we always say that we are on the front lines for everything, and firefighters are throughout this country, no matter what the situation, we are called a lot of times and we are glad to serve, but it would make it a lot easier if we could sit down with our employer and talk about what we need and how we can make it even better.

Ms. UNDERWOOD. Well, I thank you so much for the work that you do in your communities. And thank you for being here to share your stories with the committee today.

I yield back my time, Madam Chairwoman. I yield my time to Mr. Scott.

Chairwoman WILSON. You yield your time to Mr. Scott?

Ms. UNDERWOOD. Yes.

Chairwoman WILSON. You don't have—you have—

Ms. UNDERWOOD. I yield back. I yield it back.

Chairwoman WILSON. Okay. Mr. Scott has his own time. Thank you so much. We appreciate that.

This is our distinguished chairperson of the Education and Labor Committee, Dr. Scott.

Mr. SCOTT. Thank you.

Mr. Paterson, could you tell us what obligation you have to represent nonmembers of the union when there is a union?

Mr. PATERSON. Yes, I can. I think what you are referring to is the—what is known under the law as the duty of fair representation, which is that when a union represents workers, it is not just representing its members or its dues-paying members, it is representing the entire collective bargaining unit that elected it to represent them. And so the duty of fair representation requires that the union fairly represent, as it indicates, everyone, not just the members, but also nonmembers.

Mr. SCOTT. And if an individual nondues-paying member has an individualized case and you represent others in individualized cases, would you have an obligation to represent that person, notwithstanding the fact they are not paying dues?

Mr. PATERSON. That is correct. We absolutely do have that obligation, yes.

Mr. SCOTT. And in a fair-share situation where nonmembers have to pay a fair share, what are they paying for?

Mr. PATERSON. Well, in the private sector, which currently does permit the employer and the union to negotiate a fair-share system, it doesn't actually impose it as a matter of law, but they can negotiate in the contract, and most unions do, precisely because the union is obligated to represent the entire bargaining unit, and it does so, but that comes at a financial cost.

Mr. SCOTT. Now, the fair share that is imposed, is that the full union dues or just a portion of it?

Mr. PATERSON. No. The nonmembers' fair-share fee is limited to the cost of representation. It does not include political or ideological expenditures or other things like, you know, members' parties and things like that. It is purely the cost of representation.

Mr. SCOTT. That you are obligated to perform?

Mr. PATERSON. That is correct, under the law.

Mr. SCOTT. Thank you.

Dr. Slater, you had mentioned international standards. Where would we see these international standards realized? Would it be in treaties and trade agreements and things like that? Where would we see the international standards for labor rights?

Mr. SLATER. The international standards I referenced earlier would be in trade agreements and treaties, as you say, but also in the laws of the member countries. So in the laws of France, laws of Germany, laws of other Western European countries, you would see guarantees for rights of all employees, including public sector workers, to bargain collectively.

Mr. SCOTT. And based on those international standards, did I understand you to say that many States don't come up to those minimum standards?

Mr. SLATER. Well, it depends how you mean "many." I mean, one thing that should be clear is this bill would not affect the majority of States. The bill provides that we would—the FLRA, the Federal Labor Relations Authority, would review State laws to see if they met certain minimums. And I can say confidently that a clear majority of States do meet those minimums, but in—there is about eight States that don't provide any public employees the right to collectively bargain, about a dozen more that provide collective bargaining rights only to one or two types of employees. And in those States, yes, we are not in compliance with international law.

Mr. SCOTT. And if a country had those provisions, is it likely that we wouldn't do a trade agreement with them?

Mr. PATERSON. If a country had provisions—

Mr. SCOTT. If a country didn't have those minimum labor rights, is it likely that we wouldn't do a trade agreement with them? Don't we usually have—

Mr. PATERSON. Oh, yes. Yes, we do look—I think our—the better policy is to look at whether other countries have certain minimum labor standards before we do treaties with them, yes.

Mr. SCOTT. Thank you.

Senator Onder, in Senate Bill 1413, can you—do you have a provision in there that requires a union recertification, that requires

an absolute majority vote, whether voting or not, which essentially means that a no vote, a nonvote is counted as a no vote? Is that part of that bill?

Dr. ONDER. So, under 1413, every 3 years there would be a recertification election, and recertification would require a majority of all those members of the bargaining unit to vote yes.

And, you know, because these voters are all found within the workplace, within the bargaining unit, this has not proved to be an overly burdensome procedure. In Iowa, well over 95 percent, I believe, of the bargaining units did recertify under Iowa's law.

Mr. SCOTT. You and I would be in trouble if we had to run an election like that.

What is the status of the bill at this point?

Dr. ONDER. So, in March, as was mentioned earlier, a judge in St. Louis County enjoined the entire bill, which is, I believe, an act of judicial overreach of the highest order. The judge did not even consider provision by provision but enjoined the entire bill. It is awaiting trial in January.

Mr. SCOTT. I yield back my time.

Chairwoman WILSON. Thank you.

Mr. Taylor from Texas.

Mr. TAYLOR. Thank you, Madam Chair. I appreciate this hearing and appreciate the witnesses.

And I served in the State legislature in Texas for 8 years, and I happen to represent—I live in the highest per capita income city in North America. There is over a quarter million people, and as businesses come—and they primarily come from union States—and when they cite reasons they come, they talk about how Plano has great schools, how we are investing in roads, how we have a low tax burden. But another thing that is very consistently mentioned is we are a right-to-work State. And I think the success of my community, certainly the high per capita income is great, but also just looking at the employment numbers, since January 2017, we have created 620,000 jobs in Texas, and we have a 3–1/2 percent unemployment rate, which is the lowest it has ever been.

So clearly, what has worked for Texas, what has worked for my community, I hope that Congress can leave well enough alone and say, hey, they have got a right and they are doing a good job.

And, Senator, thank you for being here. I appreciate your service, and I know what it means to be a senator. It is great that your being here. I never had to do that extra duty. So thank you for taking the time to be here—

Dr. ONDER. Thank you.

Mr. TAYLOR [continuing]. from The Show-Me State.

And, Mr. Messenger, I am just going to ask you a very technical question about H.R. 1154. And it imposes—without imposing a penalty that strikes are illegal for public safety officers only when they, quote, will meet or measurably disrupt the delivery of emergency services, closed quote, and are, quote, designed to compel an employer to agree to terms of the contract, closed quote.

Based on your reading, does anything in H.R. 1154 prevent a government unit from striking over a political or a legislative issue? I mean, is there anything to stop them from—striking—

nothing to do with work but they can strike over some political issue or legislative issue.

Mr. MESSENGER. I have noticed no such restriction in the law requiring or, you know, limiting when strikes can be over and preventing them, you know, with respect to political type issues.

Mr. TAYLOR. Right. So, like, I mean, an example would be—you know, I am sure myriad examples. But obviously, that creates a whole other level which has nothing to do with work, right? I mean, I think we generally think of unions as being about work environment, pay, conditions, hours, things like that, and a lot of the benefits we have discussed today have been about those things precisely, but this allows, you know, quote/unquote, politics to be involved and strikes to go based on politics.

Mr. MESSENGER. Yes. And as the Supreme Court recognized in Janus, you know, all collective bargaining in the public sector is political. I mean, ultimately the union is trying to influence governmental policies, and even things like wages and such ultimately effect the public fisc and public services that can be provided.

So in the public sector, all collective bargaining is political, which is one of the reasons the Supreme Court in Janus held employees couldn't be forced to subsidize that advocacy.

Mr. TAYLOR. So I guess what you are saying is you could see a strike that was purely political in nature and has nothing to do with actual work or the work conditions or the employer or hour or pay or anything like that. I mean, it could just be purely political, and then the employee, the union member is then kind of forced to go on a strike that in a political cause they wouldn't even want to be a part of.

Mr. MESSENGER. Yes. And some of the testimony today I believe supports that. You know, there has been the argument that collective bargaining, you know, affects public safety. I think that is one of the justifications, you know, for the bill which we are talking about. So we are talking about something that is political ultimately, something that affects public safety, even in the opinion of those who advocate, you know, for this bill. And so, yes, it is all political.

Mr. TAYLOR. Well, and so I think when we think about our constitutional rights and something that the Bill of Rights is something very important I think to every American. You know, in the First Amendment, we have the right to freedom of speech, right to freedom of association, three other rights. But compelling people to be part of an organization they don't want to be part of and, worse, compelling them to participate in political speech, which something that may be an anathema to them, I think is a disturbing strike at the core of our democracy, at the core of this idea of fundamental free speech that we can say what we think and we don't have to worry about someone telling us what we are going to say and forcing us to go on a strike about a political cause that we don't support.

Mr. MESSENGER. I agree. I mean, monopoly bargaining in the public sector involves the government mandating that a particular organization, a union, speaks for a group of workers, whether they approve or not. And in my opinion, that infringes, you know, on their freedom of association, including even if there is a secret bal-

lot election. You know, the Supreme Court said in West Virginia v. Barnette, the First Amendment exists to protect certain liberties from majority rule, and those liberties cannot be subjected to a majority vote.

And so if each individual has the right to decide who represents them, who speaks for them in their relations with government, which they certainly do under the First Amendment, it is unconstitutional, in my opinion, to force individuals to accept a representative even pursuant to a majority vote.

Mr. TAYLOR. All right. Thank you.

And, Madam Chair, I yield back the balance of my time.

Chairwoman WILSON. Thank you.

Mr. Watkins—

Mr. WATKINS. Thank you, Madam Chair.

Chairwoman WILSON.—from Kansas.

Mr. WATKINS. Thank you.

In 2018, my home State of Kansas marked its 60th anniversary of becoming a right-to-work State. Kansans felt so strongly about this that, in 1958, they voted in favor of adding a right-to-work amendment to our State's Constitution. Twenty-seven States, including Kansas, have now passed laws that prohibit a worker from being forced to join a union. And a Bureau of Labor Statistics shows the union membership rate was only 10.5 percent in 2018. This is down .2 percent from 2017.

Senator Onder, you are a neighbor in Missouri, and in your State, your State went to the polls to vote on a proposition to enact a right to work, but the measure was defeated. We have heard a considerable amount today extolling the virtues of government union bargaining privileges. You yourself are from a State in which government employees have such privileges.

Dr. ONDER. I do.

Mr. WATKINS. In your opinion, as a State lawmaker, do any of the benefits of government union bargaining justify Congress imposing it onto State and local governments, or would it make more sense to advocate—to advocates to have this debate in State capitals?

Dr. ONDER. I believe that it does make sense to have this debate in State capitals. I think there is no question that States have very different labor policies regarding public sector unionization, Wisconsin versus New Jersey, Kansas versus California. And I think our principles of federalism, our principles of democratic self-governance dictate that remain the case.

One of the members emphasized the freedom of association at work being a fundamental human right. I would agree with that. Doesn't that include the right of that worker to decide whether he or she wants to join or support a union? Doesn't it include the right of that worker to periodically vote whether or not he wants to continue monopoly representation by a union?

So I believe that our current system of federalism serves us well. The needs of New Jersey might be different than the needs of Kansas, but to impose a one-size-fits-all tyrannical regime from Washington, I think, is the wrong approach.

Mr. WATKINS. Thank you, Senator.

And I yield the remainder of my time, Madam Chair.

Chairwoman WILSON. Thank you. Thank you so much.

And now, we want to welcome Ms. Finkenauer, who does not serve on our committee but is a sponsor of the bill.

Ms. Finkenauer of Iowa.

Ms. FINKENAUER. Thank you, Chairwoman Wilson.

And also, thank you, Chairman Scott, for allowing me to be here today and be part of this discussion which is very personal to me.

I have to tell you it has been an interesting, you know, few moments here on this committee listening to some of the testimony today, and frustrated and disappointed by some of the rhetoric that I have heard spewed that is anti-union and antiworker.

You know, State Senator Onder, you are a neighbor to my home State of Iowa. I was a former State legislator myself for 4 years in Iowa, and I have to tell you, I have done some research while I have been up here and, again, your rhetoric that you have been spewing against unions and also your record against working families is disappointing and, quite frankly, offensive.

You see, this is personal to me. And I grew up a daughter of a union pipefitter/welder in Iowa. My mom was a public school secretary. Heck, my grandfather was a lieutenant firefighter who helped advocate for Iowa's bipartisan collective bargaining law back in the seventies. It is a law that has worked well in my State, and it is a law that, sadly, I saw destroyed during my time in the State House.

You see, I will never forget February of 2017, standing on that State House floor after days of hearing testimony from my friends, my family, and my neighbors in my home State who are just working their tails off to provide for their families, folks like our teachers, our corrections officers, our bus drivers, who aren't asking for a whole heck of a lot but were asking to be treated with dignity and with respect.

And there we were standing on that State House floor, and I looked up into that gallery as my Republican colleagues in the State of Iowa were about to vote yes to gut their rights. And I looked up and I saw tears in many of their eyes, and I had tears in my own, thinking to myself in that moment that is not how we treat people in my State or in my country and I was going to do whatever I could to get it back.

So here I am in Congress, right now, working with my colleagues, trying to fight like heck for my friends, my family, and my neighbors who I saw the State of Iowa let down.

You see, we have got a lot of issues since that gutting of collective bargaining happened in the State of Iowa. And, heck, since 2011, actually, we have lost a thousand public employees in the State. These staffing shortages now that we have seen since the gutting of collective bargaining has resulted in a failure to train employees on vital safety measures, which have literally put their lives on the line. And in one State mental health facility in my own district, four employees have been attacked in the last 10 months. It is unconscionable. And, again, this is not how you treat people in my State or in my country.

The law also quite literally created a system that was rigged against working people, forcing unions to go through a costly and burdensome recertification process that was designed to make

them fail, but they didn't. As you said, 95 percent of them were recertified, because they worked their tails off and they appreciate their unions who step up for them, who have their backs every single day.

And I have to tell you, I am proud to represent my friends, my family, and my neighbors. I was proud to represent them in the State House, and I am proud every day to represent them in Congress. And I am also proud to now be a sponsor of the Public Service Freedom to Negotiate Act, again, with my colleagues here today. It prevents States from attacking public employees' collective bargaining rights like they did in Iowa, ensuring that they can negotiate for fair pay and safer workplaces.

I am grateful for all of you being here today. But I would really like to focus on these last few minutes of this committee, if Mr. Paterson and Dr. Slater can walk us through how this legislation that I mentioned, that Public Service Freedom to Negotiate Act, will help workers in States like Iowa, like mine, and like those across the country, who have seen their rights already undermined.

Mr. PATERSON. Well, in the short time—thank you and thank you for supporting this bill and sponsoring it. We are very grateful. The—and I see I only have a few seconds, so let me just say that the bill essentially does three things. It ensures that a major sector of the work force can actually exercise the constitutional right to form and join a union. It ensures that employers have to sit down and talk to the union and negotiate with the union that the workers have elected. And then if they can't reach an agreement, it applies objective processes to make sure that those disputes don't boil over, that the parties don't resort to brinkmanship or other existential type of tactics and, instead, work productively to reach a solution and for the better of everyone in the economy.

Thank you.

Ms. FINKENAUER. Thank you very much.

And I yield back.

Chairwoman WILSON. Thank you so much.

You can put that into the record for us in writing, the answer.

That would be for Ms. Finkenauer and other members of the committee.

Thank you, Mr. Paterson.

I remind my colleagues that, pursuant to committee practice, materials for submission for the hearing record must be submitted to the committee clerk within 14 days following the last day of the hearing, preferably in Microsoft Word format. The materials submitted must address the subject matter of the hearing. Only a member of the committee or an invited witness may submit materials for inclusion in the hearing record. Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record via an internet link that you must provide to the committee clerk within the required timeframe, but please recognize that years from now that link may no longer work.

Again, I want to thank the witnesses for their participation today. What we have heard is very, very valuable. Members of the committee may have some additional questions for you, and we ask the witnesses to please respond to those questions in writing. The

hearing record will be open for 14 days in order to receive those responses.

I remind my colleagues that, pursuant to committee practices, witness questions for the hearing record must be submitted to the majority committee staff or committee clerk within 7 days. The questions submitted must address the subject matter of the hearing.

Before recognizing the ranking member for his closing statement, I ask unanimous consent to enter into the record the following materials: Letters from the Service Employees International Union, the Leadership Conference on Civil and Human Rights, and the International Federation of Professional and Technical Engineers in support of the Public Service Freedom to Negotiate Act of 2019, H.R. 3463; and a letter from the National Association of Police Organizations, Incorporated, in support of the Public Safety Employer-Employee Cooperation Act, H.R. 1154.

I also ask unanimous consent to enter into the record a statement from Senator Mazie Hirono, who has championed the Public Service Freedom to Negotiate Act in the Senate.

Without objection, so ordered.

[The information referred to follows:]

June 25, 2019

Dear Representative:

On behalf of the 2 million members of the Service Employees International Union (SEIU), I write to support The Public Service Freedom to Negotiate Act (PSFNA). This important legislation would strengthen the workplace rights of hardworking public servants who are on the frontlines of keeping our communities safe and strong.

When working people—Black, white, and brown—join together in unions, they have the power in numbers to raise wages, secure basic needs like healthcare coverage, make life better for their families and build stronger communities. But for decades, well-heeled special interests have used their power and influence to make it harder for working people to stick together in unions. Since more people working in public service are united in a union than in the private sector, public servants have consistently been the target of these ceaseless attacks.

The Public Service Freedom to Negotiate Act would offer much-needed support for America's public servants by guaranteeing their right to join together in unions and negotiate for better pay and working conditions. Under our current system of labor law, The National Labor Relations Board oversees workplace rights in the private sector, but there is no corresponding federal entity to uphold job protections for people working in public service. We strongly support the framework envisioned under the bill, which would authorize the Federal Labor Relations Authority (FLRA) to ensure that public employees in every state are accorded basic workplace protections and rights.

From water quality engineers in Flint, Michigan to Florida bus drivers who get our children to and from school safe and sound, SEIU public service members work every day to keep our communities strong. On behalf of our members we are proud to support this legislation. We may add votes on this legislation to our legislative scorecard. For more information, please contact Jaya Chatterjee at jaya.chatterjee@seiu.org or (202)-730-7703.

Sincerely,

John Gray
Legislative Director

JG:jc:jf
opeiu#2
afl-cio, clc

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The Leadership Conference on Civil and Human Rights

1620 L Street, NW
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20036

202.466.3311 voice
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www.civilrights.org

The Leadership Conference

June 25, 2019

Support the Public Service Freedom to Negotiate Act of 2019 (H.R. 3463)

Dear Members of the House Committee on Education and Labor,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we write to urge you to support the Public Service Freedom to Negotiate Act of 2019 (H.R. 3463). Unions play a critical role in the ability of working people to advocate for increased wages and improved workplace standards, yet the right of public servants to join a union is not protected by federal law. The Public Service Freedom to Negotiate Act of 2019 will remedy this injustice by ensuring that public employees of state, territorial, and local governments have the right to join a union and collectively bargain for better wages, benefits, and working conditions.

Unions play an important role in advancing civil rights protections for working people. Unionized public service workers —the majority of whom are women and one-third of whom are African American, Latino, or Asian American and Pacific Islanders— have narrowed gender and race wage gaps, secured higher safety standards, and won more resources to meet the needs of the people they serve.[i] Enabling working people to freely exercise the right to form unions is one of the most effective, efficient, and comprehensive ways to translate promised equal opportunity into real economic security.

Unlike private sector workers, however, public sector workers like teachers, firefighters, and other public servants have no federal law that protects their freedom to join a union and collectively bargain for fairer wages and working conditions. This leaves public sector workers vulnerable to attacks by anti-union and corporate entities seeking to cut wages and benefits and weaken worker protections by silencing the voices of working people. At the state level, these efforts have resulted in legislation that severely curtails or even eliminates public employees' freedom to organize[ii]. Just last year, the U.S. Supreme Court overturned 40 years of precedent in *Janus v. AFSCME,* stripping unions of their ability to collect agency fees from non-members in order to collectively bargain for improvements that benefit all employees.[iii]

The Public Service Freedom to Negotiate Act of 2019 will serve as a long overdue remedy for the dedicated public employees working every day to improve their communities by codifying their collective bargaining rights, including the right to:

- Join together in a union selected by a majority of employees;
- Collectively bargain over wages, hours, and terms and conditions of employment;

The Leadership Conference

- Access dispute resolution mechanisms, such as mediation, fact-finding, and arbitration;
- Utilize voluntary payroll deduction for union dues;
- Engage in concerted activities related to collective bargaining and mutual aid; and
- Have their union be free from requirements to hold rigged recertification elections.

Through organizing, bargaining, litigation, legislative, and political advocacy, unions and the labor movement have played a significant role in advancing the rights and interests of people of color and women in the workplace and in our society overall. Unions can best play this role when the right of workers to organize and bargain is fully protected and can be freely exercised.

Working people in America need – and have a right to enjoy – the benefits that result from collective bargaining and union membership. We urge you to stand with our country's 17.3 million public employees and fight back against the unrelenting attacks on working people by passing the Public Service Freedom to Negotiate Act of 2019. If you have any questions, please contact Gaylynn Burroughs, Senior Policy Counsel at burroughs@civilrights.org.

Sincerely,

Vanita Gupta
President & CEO

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[i] Wolfe, Julia and Schmitt, John. "A Profile of Union Workers in State and Local Government." *Economic Policy Institute.* June 7, 2018. Available at https://www.epi.org/publication/a-profile-of-union-workers-in-state-and-local-government-key-facts-about-the-sector-for-followers-of-janus-v-afscme-council-31/.
[ii] Lafer, Gordon. "The Legislative Attack on American Wages and Labor Standards, 2011-2012." *Economic Policy Institute.* October 31, 2013. Available at https://www.epi.org/publication/attack-on-american-labor-standards/.
[iii] Miller, Brian. "Unpacking the Janus Decision." *Forbes.* June 27, 2018. Available at https://www.forbes.com/sites/briankmiller/2018/06/27/unpacking-the-janus-decision/#7826d21f41a4.

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Gustavo Vallejo
WESTERN

Tina Zellmer
MIDWESTERN

June 25, 2019

Hon. Mazie Hirono
United States Senate
713 Hart Senate Office Building
Washington, DC 20510

Hon. Matt Cartwright
U.S. House of Representatives
1034 Longworth House Office Building
Washington, DC 20515

Dear Senator Hirono & Representative Cartwright:

As the executive officers of the International Federation of Professional & Technical Engineers (IFPTE), representing upwards of 90,000 workers, including public sector workers in California, Connecticut, Illinois, New Jersey, and Rhode Island, we are writing regarding The Public Service Freedom to Negotiate Act of 2019. We applaud you for authoring this much-needed legislation, which comes one year after the 5-4 Supreme Court *Janus vs. AFSCME Council 31* ruling preventing public sector unions to collect representational fees from all represented members in a collective bargaining unit. IFPTE is pleased to endorse this legislation.

IFPTE is pleased that you have timed the introduction of this bill to coincide with the one-year anniversary of this draconian decision intended to gut the resources that unions like IFPTE collect to represent our members. While some States, such as New Jersey, California, Hawaii and elsewhere, have acted to become compliant with the decision without attempting to deny workers of their right to belong to a union, others have unfortunately taken the opportunity to either further public sector worker collective bargaining rights, or blocking them altogether. Of course, this is the exact consequence that the anti-union forces were seeking to accomplish in the wake of the Janus ruling, and is reflective of the need for your bill.

As it stands now, there is no federal law that protects the rights of state, county, and municipal government workers to belong to a union and collectively bargaining. Your bill will change this. If a State government refuses to guarantee union and collective bargaining rights, or frustrates the ability of workers to form and belong to a union, your legislation will empower the United States federal government to step in on behalf of workers. In particular, it will enable the Federal Labor Relations Authority (FLRA) to intervene and determine if public sector employers infringed on the rights of their employees. Specifically, the bill will:

- Allow for union dues deduction for members of a collective bargaining unit;
- Outlaws the 'free rider' Janus decision allowing workers in a collective bargaining unit to enjoy the benefits negotiated by the union without paying union dues;
- Give workers the right to organize and join unions in public sector workplaces, and collectively bargain over wages, benefits and working conditions;

– Continued –

- Ensure for employer recognition of the union following a vote in favor of union representation by members of a collective bargaining unit;
- Establish an impartial process for resolving impasses between the union and the employer;
- Provide for payroll deduction for union dues;
- Prevent mandated and/or employer forced recertification union elections.

It is important to note that this bill will only affect those rogue State governments that elect to deny their workers the ability independently decide whether they want union representation, and the ability properly represent their members after a positive vote for a union. This bill does not deny States the ability to create their own collective bargaining laws that respect employee democracy and due process. Rather, it will only apply to those that partially or completely deny workers of their rights.

IFPTE is particularly happy with the enforcement mechanisms provided for in the legislation. We are pleased with the provision that allows for a private right of action to force compliance in the federal courts absent the FLRA filing suit. Equally important is the language that mandates swift employer recognition of the union following a vote by employees to form a union, as well as binding first contract arbitration of no agreement is reached during the inaugural negotiation between the union and the employer. This is critical to ensure that employers will simply refuse to negotiate in good faith in the hopes that workers will eventually just 'give up' and decertify their union.

We thank you again for introducing The Public Service Freedom to Negotiate Act of 2019 and encourage all Senators and Representatives to cosponsor it.

Sincerely,

Paul Shearon
President

Matthew Biggs
Secretary-Treasurer/
Legislative Director

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
Subcommittee on Health, Employment, Labor, and Pensions

Statement of
William J. Johnson on behalf of the
National Association of Police Organizations
317 S. Patrick Street, Alexandria, Virginia 22314

"Standing with Public Servants: Protecting the Right to Organize."
June 26, 2019

Chairwoman Wilson, Ranking Member Walberg and distinguished members of the Subcommittee, my name is William Johnson and I am the Executive Director of the National Association of Police Organizations (NAPO). I am submitting this statement today on behalf of NAPO, representing over 241,000 rank-and-file law enforcement officers throughout the United States. NAPO is a coalition of police unions and associations from across the nation, which was organized for the purpose of advancing the interests of America's law enforcement officers through legislative advocacy, political action and education.

Congress has long recognized the benefits of a cooperative working relationship between labor and management. Over the years, Congress has extended collective bargaining rights to public employees including letter carriers, postal clerks, public transit employees, and even Congressional employees. However, under current federal and state laws, some public safety employees, including law enforcement, corrections, and fire, are denied the basic rights of collective bargaining. Law enforcement officers put their lives on the line every day to preserve the security and peace that our nation enjoys. It is wrong that many of these same officers are denied the basic American rights of collective bargaining for wages, hours, and safe working conditions.

While many public safety agencies have benefited from a productive partnership between employers and employees, other agencies have not. Currently, many states do not have a legal framework for public safety officers to bargain with their employers, and two states – Virginia and North Carolina – prohibit it altogether. History shows that denying workers the right to bargain collectively causes poor morale, the waste of resources, unfair and inadequate working conditions, and low productivity. Ultimately, it is the public's safety and security that is jeopardized by such poor working conditions for police.

On June 5, 2007, Paul Nunziato, a Police Officer with the Port Authority of New York and New Jersey Police Department, and then-Vice President of the Port Authority Police Benevolent Association (PBA), testified before this Subcommittee on this very legislation. Officer Nunziato, now President of the PBA, spoke of the crucial role collective bargaining rights play in protecting the health and welfare of public safety officers and their families, particularly after the September 11, 2001 terrorist attacks. Twelve years after his testimony, and eighteen years after 9/11, his testimony still rings true:

> On September 11, 2001 the World Trade Center, the headquarters of the Port Authority of New York and New Jersey and worldwide symbol of New York and America, was

attacked.

Only 10 Port Authority police officers were working at the World Trade Center police command at the time of the terrorist attacks on September 11th. Within minutes of the attacks, police officers from throughout our job mobilized from all thirteen police commands to respond to the attacks. I myself responded from home and was mobilized from my command, PATH, a subway system running between New York and New Jersey. Of the 23 members of my roll call at the PATH police command that day, **10** came home. The Port Authority Police Department suffered the worst single day loss of life of any law enforcement agency in the history of the United States. Despite the tremendous risks, I can definitively state that no Port Authority police officer refused an order to respond to the World Trade Center or to enter the towers on September 11th.

Unfortunately, I have direct knowledge that our collective bargaining agreement provides security to our members and their families. My partner, Donald McIntyre, was one of 37 members of my police department who lost their lives in the World Trade Center evacuation effort. Donnie was married with two young children; his wife, Jeannine, was pregnant with a third child. Nothing could make up for the loss of Donnie to his family and that void will never be filled. But as a Vice-President of my union, it pleases me to see that Jeannine does not have to worry about paying bills or providing healthcare for her children due in large part to the benefits my union has negotiated for our membership.

I also want to take this opportunity to address members of this Committee and the Congress who believe that granting collective negotiation rights to police officers represents a danger to national security. The vast majority of the then 1,000 police officers in my agency worked steady 8-hour tours on a 4 day on 2 day off schedule. We had up to 6 weeks of vacation and additional personal leave time. By the end of the day on September 11th, the Port Authority Police Department switched everyone in the Department to 12-hour tours, 7 days a week. Vacations and personal leave time were cancelled. My union did not file any grievances regarding these changes. Everyone recognized that this was a crisis and that emergency measures needed to be resorted to. Our schedule did not return to normal for nearly 3 years. The bottom line is that, even in states with long and strong histories of collective negotiation rights for public safety personnel, management retains discretion to respond to emergencies and potential security risks without negotiation with employees.

As the health risks associated with exposure to the World Trade Center site following 9-11 become more manifest, I am protected by my union's efforts to ensure that workers in the rescue and recovery effort are properly monitored and treated for exposure related diseases that do occur. Employers cannot be permitted to act unchecked because they do not place workers' interests first. For example, the City of New York repeatedly has denied that any of its police officers, firefighters, EMS personnel or other city workers were sickened by exposure to the World Trade Center site. My own agency has resisted classifying legitimate exposure diseases as injuries in the line of duty. I was exposed that day and continued to be exposed for more than a thousand hours in the months afterward as part of the Ground Zero recovery effort.

As Officer Nunziato points out, unions play a large role in officer wellness. It is public safety unions leading the charge to permanently reauthorize the September 11th Victim Compensation Fund, knowing

the importance of the VCF to the wellbeing of officers and their families. Public safety unions are fighting to ensure PTSD is covered under state workers' compensation plans, understanding the stresses and strain of the job, particularly after a mass-casualty incident. Some unions are not only providing peer mentoring to their members, but they also offer officers peace of mind that someone will take care of them or their families if, God forbid, they are injured or killed in the line of duty. It is vital that every officer across the country is given this right to form and join a union, not only for these essential benefits, but also for ensuring they have a say in their wages, hours and working conditions.

The Public Safety Employer-Employee Cooperation Act (H.R. 1154 / S.1394) would do this by guaranteeing that law enforcement officers, firefighters, and emergency medical service workers in all 50 states have the right to discuss workplace issues with their employers. It will provide a framework for such discussions, while respecting the right and flexibility of states to write their own laws for public safety workers. This legislation will not overturn current collective bargaining laws – it will only provide the basic right of collective bargaining over wages, hours, and working conditions to those who currently do not have them.

It is time for the Congress to step up to the plate and act in a comprehensive fashion to assure collective bargaining in states which do not have it. Law enforcement officers in this country are working in an increasingly difficult environment, facing rising violence and acrimony against the profession and responding to too many active shooter and mass casualty events. This legislation would allow law enforcement officers to have a say in their own working conditions to better serve and protect their families and the public. Most importantly, it will allow public safety officers to secure the necessary protections that will permit them to walk unselfishly into the line of fire to save the lives of our fellow citizens.

The public safety is best protected through effective partnerships between first responders on the front lines and the agencies that employ them. This legislation will ensure that public safety officers can meet with local officials to discuss how they do their jobs and how best to protect the public.

Thank you for your time and consideration of this important issue.

Statement of
U.S. Senator Mazie K. Hirono
Before the
U.S. House of Representatives
Committee on Education and Labor
Subcommittee on Health, Employment, Labor, and Pensions

June 26, 2019

Chair Wilson, Ranking Member Walberg, and members of the subcommittee, thank you for extending the personal courtesy for me to participate in this important hearing today and to speak in support of the Public Service Freedom to Negotiate Act of 2019. I would also like to thank Chairman Bobby Scott for his strong leadership in the fight for America's workers, as well as, Rep. Matt Cartwright who has been a strong partner in this effort.

While we sit here today, conservative, right-wing forces are engaged in an all-out assault on working people. Their target? Private and public sector workers and the unions who are fighting on their behalf.

And while private sector unions at least have some protections under the National Labor Relations Act, public employees have been historically forced to rely on Supreme Court precedent to protect their basic labor rights.

That's why the Court's decision last year in Janus was so damaging. In one fell swoop, the Court overturned more than 40 years of precedent – the Abood decision – and barred public sector unions from collecting fair share fees from employees who had opted out of the union but who the union is still legally required to represent.

The Supreme Court's decision in Janus was not unexpected. Its decision was the culmination of a decades-long effort by groups like the Federalist Society and the Heritage Foundation to undermine settled precedent in Abood in order to weaken public sector unions.

These groups worked methodically to achieve their goals. First, Justice Alito all but invited a challenge to Abood when he wrote his decisions in Knox v. SEIU Local 100 and Harris v. Quinn.

He called the justification for allowing a union to collect fair share fees "an anomaly," said "[t]he Abood Court's analysis is questionable on several grounds," and laid out the grounds for someone to bring a case to overturn Abood.

This was an invitation to conservative groups to then go looking for a plaintiff to do just that. They funded Friederichs v. California Teachers Association, which was fast tracked to the Supreme Court in 2016 where "the signaler" Justice Alito awaited the case.

Public Employee unions received a temporary reprieve in a deadlocked 4-4 decision because of Justice Antonin Scalia's unexpected death.

The well-funded conservative interests them saw a huge opportunity to fill the vacancy with someone to their liking.

From applauding Mitch McConnell single-handedly blocking the nomination of Merrick Garland, to spending millions to confirm Neil Gorsuch, they wanted a justice who was "on their side."

They got it in Gorsuch who delivered the decisive 5th vote in Janus, torpedoing 41 years of precedent under the pretext of protecting "fundamental free speech rights."

Justice Elana Kagan saw right through this argument she said: "The majority overthrows a decision entrenched in this Nation's law . . . for over 40 years. . . . And it does so by weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy."

Undermining public employee unions, in fact all unions, has gained momentum because of the 5-4 majority on the Supreme Court.

But unions are fighting back. We've seen tens of thousands of teachers taking to the streets in cities and states across the country demanding – and in many cases securing – more investment in public schools, smaller class sizes, and a living wage for teachers.

In the year since Janus, public sector unions like AFSCME are adding thousands of new dues-paying members energized to fight back against the conservative assault on unions' very existence.

Our public employee unions are doing their job to stay in the fight, and Congress needs to do its part. That's why yesterday, I joined 34 of my Senate colleagues and 27 of my House colleagues to introduce the Public Service Freedom to Negotiate Act of 2019.

This legislation affirms to all 17.3 million public sector workers nationwide that we value your service to the public and that we are fighting to protect your voice in the workplace.
Our bill codifies the right of public employees to organize, act concertedly, and bargain collectively in states that currently do not afford these basic rights.

Under our legislation, states have wide flexibility to write and administer their own labor laws provided they meet the standards established in the legislation. And it will not preempt laws in states that substantially meet or exceed this standard.

Your right to organize shouldn't depend on whether you live in a state that has robust worker protections, like Hawaii. And workers shouldn't be held captive to the anti-union bent of the Roberts Five on the Supreme Court.

The fight to protect the right to organize is not an abstract issue. Unions have lifted people into the middle class, especially for women and people of color.

I speak from personal experience. When I was a young child, my mother worked for years in low-wage jobs that provided no job security, no health care, no stability. We lived paycheck to paycheck.

This all changed when my mother and her coworkers organized and formed a union. That union happens to be the CWA. Unionization brought job and economic security to our family.

Our public employee unions are fighting on behalf of millions of people across our country who are serving our communities. They are our teachers, our firefighters, or social workers, our EMTs and our police officers. They are us.

These are not normal times. We all need to come together to fight back against an all-out assault on working people.

Thank you Madam Chair.

Chairwoman WILSON. I now recognize the distinguished ranking member for his closing statement.

Mr. WALBERG. I thank the gentlelady and our Chairman, and thank you for running the Committee the way you have. I appreciate that.

And I thank all of the witnesses who have been here today. The panel has been valuable to us. I especially want to thank Ms. Whitaker and Captain Brewer for being here as evidences of the public sector employees that this legislation would definitely deal with.

Being a son of a schoolteacher, a nephew of three schoolteachers, a father-in-law of one schoolteacher, I appreciate the work you do, Ms. Whitaker.

And being the son-in-law of a firefighter, I appreciate what you do.

And I appreciate the fact that, oftentimes, when we get into legislation like this or we get into votes about public sector, unionization, and benefits, we always put forward the first responders and the teachers, because that pulls the heartstrings, as it ought to, of our citizens. I am not denigrating public employees that aren't first responders or schoolteachers, but you folks are on the front lines doing things that some of us can't do or won't do, and we appreciate your efforts.

The comments that have been made today, the questions and the answers that have been given have been helpful. One set of comments and indications that I heard, though, did cause me concern. We are not any other nation in the world. Can I make that clear? And I think many of us believe that. I hope all of us believe that. We are not any other Nation in the world. There is an international community. The United States of America is separate from any other nation in the world, and it ought to be.

We started out as a Nation that broke away from international regulations on us that we would not accept. We fought a revolutionary war to be unique. And what was that uniqueness? Freedom. Personal liberty.

We are endowed with certain unalienable rights given to us by our Creator, as the Declaration of Independence says, namely, the right to life, liberty, and the pursuit of happiness. And we are talking about liberty and the pursuit of happiness here in this discussion today. We are talking about the freedom to make choices, significant choices.

I appreciate the sponsor of the bill pointing out that after the law was changed in Iowa, there has been a 95 percent recertification by people who had that choice and made that choice.

I don't think anyone on this side of the aisle, regardless of what has been said by some of our friends and colleagues on the other side, a few who indicated very clearly that we oppose unions and collective bargaining. No, we don't. I was a union member and benefited from my father being a union member and helping to organize steel unions or steel mills in Chicago. My working conditions were far better than his were because of what the union did.

We are not against that, but we are saying there ought to be choice, that free citizens in a free country, unique and separate from any other nation in the world that has the highest standard

of living, is a manufacturing nation of the world, leads in every other way, and wants to continue. And I come from a State that still people say you have got to be kidding. Is Michigan a right-to-work State? They can't believe that, and yet it is. And Michigan has more jobs coming back now, jobs that we lost before, more security in the work force, better pay. A middle class is coming back. Great cities like Detroit that are reemerging as a result of freedom and choice. That is what we are asking for.

But I also state, in this particular issue with public sector employees, it is different. I don't have tenure. I have to go to the ballot box every year. I have to recertify every year myself because I am a public servant, and public servants take on that role, whether it is in teaching and firefighting and in law enforcement or in doing the bureaucratic work that is necessary to run a system of government that meets the needs of people.

But we are different. We want to make sure that our citizens, the taxpayers, are represented well and are given a chance and not simply run over by a political system that unionizes for that purpose and purpose alone and doesn't give the choice to their employees.

So, Madam Chairperson, thank you for giving me the opportunity to make this statement. The differences in State government are unique and beautiful things. That is the undergirding of this great democracy, a Republican form of democracy, a constitutional democracy, but it started at the behest of the States. So to denigrate the powers of the States and the rights of the States by taking those away that they give to us as the Federal Government, not the other way around, is the wrong way to go.

Let's continue to communicate to work together, but let's enforce the freedom that comes from individual States being laboratories of success or failure, but in the end, laboratories that ultimately produce better success.

Thank you, and I yield back.

Chairwoman WILSON. Thank you.

I now recognize myself for the purpose of making my closing statement.

Thank you again to all of the witnesses for your testimonies today.

Today, we heard about the status of public sector collective bargaining and the legislative proposals which ensure State and local government employees can exercise this right. These bills create minimum standards for collective bargaining rights that all States must meet to secure public servants' right to collectively bargain.

We heard from Ms. Whitaker how what the difference between not having a union and having one meant to her as a teacher, and how these rights are now under attack in my State of Florida. We heard from Mr. Brewer on how collective bargaining protects the safety of both our first responders and the public at large. We will stand with both of them and with all public servants to assure that they have respect and dignity on the job.

I was a teacher before the United Teachers of Dade was organized in Miami, and when it was organized, oh, boy, what a difference did it make in my life and the life of my family. I had

healthcare, not only for me but my family, and a great middle-class salary.

We can't go back. We won't go back. And as our witnesses have made clear, Congress must pass the Public Service Freedom to Negotiate Act and the Public Safety Employer-Employee Cooperation Act to protect public servants' rights to organize and collectively bargain.

Once again, I thank the witnesses for being here, thank the audience for staying through this long hearing, and I thank my colleagues for a constructive Health Subcommittee hearing.

If there is no further business, without objection, the committee stands adjourned.

[Questions submitted for the record and their responses follow:]

COMMITTEE ON EDUCATION
AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

July 16, 2019

Mr. Tom Brewer
President, Charlotte North Carolina Firefighters L660
President, North Carolina Firefighters Association
134 Yeoman Road
Mooresville, NC 28117

Dear Mr. Brewer,

I would like to thank you for testifying at the June 26, 2019, Subcommittee on Health, Employment, Labor, and Pensions hearing entitled *"Standing with Public Servants: Protecting the Right to Organize."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Tuesday, July 23, 2019, for inclusion in the official hearing record. Your responses should be sent to Katelyn Walker of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Health, Employment, Labor, and Pensions Hearing
"Standing with Public Servants: Protecting the Right to Organize"
Wednesday, June 26, 2019
10:15 a.m.

Representative Frederica Wilson (D-FL)

Mr. Brewer, during the Wednesday, June 26, 2019 HELP Subcommittee hearing on public sector collective bargaining, Representative Van Taylor asked Mr. William Messenger about the strike provision in the *Public Safety Employer-Employee Cooperation Act* (H.R. 1154). While characterizing that provision, Representative Taylor stated that, "without imposing a penalty, strikes are illegal for public safety officers only when they quote 'will measurably disrupt the delivery of emergency services' and are 'designed to compel an employer to agree to the terms of a contract.'" Representative Taylor then asked Mr. Messenger if "anything in H.R. 1154 prevent[s] a government union from striking over a political or a legislative issue?" In response, Mr. Messenger stated that "he noticed no such restriction in the law requiring or limiting what strikes can be over and preventing them with respect to political type issues."

- How does the strike provision in H.R. 1154 impact public safety officers' ability to strike?
- Does the strike provision in H.R. 1154 allow public safety officers to engage in strikes over political issues?

Mr. Brewer, these men and women serve our communities every day, regardless of personal risk, and deserve the ability to collectively bargain. All labor unions are critical to growing America's middle class, and this is an area where we have fallen short as a country in providing equal rights for our public safety officers. Mr. Brewer, it is often assumed that firefighters, police, and first responders only serve local communities and therefore it is the responsibility of states, not the federal government, to provide basic collective bargaining rights. But I think the federal government does have an important role in providing rights to public safety officers.

- Can you speak on the important work you all do in support of federal emergency efforts and why Congress has a role in providing baseline rights for you all?
- Mr. Brewer, how would having a minimum standard that ensures public safety officers have the right to collectively bargain help fire departments retain and recruit firefighters?

COMMITTEE ON EDUCATION
AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

July 16, 2019

Mr. Teague P. Paterson, J.D. / Member of California, New York, and D.C. Bars
Deputy General Counsel
AFSCME
1101 17th Street, NW, Suite 900
Washington, D.C. 20036

Dear Mr. Paterson,

I would like to thank you for testifying at the June 26, 2019, Subcommittee on Health, Employment, Labor, and Pensions hearing entitled *"Standing with Public Servants: Protecting the Right to Organize."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Tuesday, July 23, 2019, for inclusion in the official hearing record. Your responses should be sent to Katelyn Walker of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

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ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Health, Employment, Labor, and Pensions Subcommittee Hearing
"Standing with Public Servants: Protecting the Right to Organize"
Wednesday, June 26, 2019
10:15 a.m.

Representative Frederica Wilson (D-FL)

Mr. Paterson, you are aware, I assume, that OSHA does not cover public employees, and only 26 states have taken advantage of the legal option to cover public employees. That means that there are over 8 million public employees in the country who have no right to a safe workplace even though they do the same work—or far more dangerous work—than private sector employees. For many of these employees, the only opportunity they have to protect their lives is through health and safety language negotiated in their contracts—where they have bargaining rights.

- Wouldn't you agree, therefore, that for many public employees, bargaining rights are literally a matter of life and death?
- Do you think that public employees—highway workers, prison workers, wastewater treatment plant workers, hospital workers—have a right to a safe workplace?

Mr. Paterson, Wisconsin was the first state to enact a public sector collective bargaining law that gave state and local workers the ability to join unions and negotiate over the terms and conditions of their employment. In 2011, Wisconsin adopted legislation, Act 10, that eviscerated those rights for most public employees, even eliminating employees' ability to bargain over wages. Since the passage of Act 10, the people of Wisconsin have suffered greatly as teacher pay dropped 8%, which has led to a statewide shortage of qualified educators. One study conducted by E. Jason Baron found that statewide student achievement on science and math was reduced because of the massive exodus of people from the teaching profession caused by the restrictive law.

- What do the economic and educational outcomes in the aftermath of Act 10 tell us about the role of collective bargaining in the public sector?

Mr. Paterson, in 2012, Michigan enacted a law that prohibited schools from deducting union dues from teachers' paychecks, even when the teacher wants to support the union and requests the deduction. This deduction should work the exact same way an employer deducts money for an employee's healthcare plan, but Michigan made this illegal with respect to union dues.

- Doesn't this undermine teachers' ability to do what they want with their own money?

Mr. Paterson, The *Public Service Freedom to Negotiate Act of 2019* includes a private right of action that permits an aggrieved party to file suit in federal court after the passage of 180 days.

- How does this provision allow public employees to ensure their rights are protected?
- How does this provision comply with the Eleventh Amendment?

Mr. Paterson, several states, like Wisconsin, Florida, and Iowa, have enacted legislation that requires workers vote annually for the union representatives that they have already selected. These laws measure election success based on the votes of all eligible voters, not just those voting in the election. Measuring an election win in this manner, essentially counts every voter that does not vote as a **no.** Many of my colleagues in Congress could not get elected if we counted votes this way.

- How do these recertification laws harm workers?
- How does the *Public Sector Freedom to Negotiate Act of 2019* protect workers from burdensome and unnecessary votes?

COMMITTEE ON EDUCATION
AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

July 16, 2019

Mr. Joseph Slater, J.D., Ph.D.
Eugene N. Balk Professor of Law and Values and Distinguished University Professor
University of Toledo, College of Law
2801 W. Bancroft Street, Mail Stop #507
Toledo, OH 43606

Dear Dr. Slater,

I would like to thank you for testifying at the June 26, 2019, Subcommittee on Health, Employment, Labor, and Pensions hearing entitled *"Standing with Public Servants: Protecting the Right to Organize."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Tuesday, July 23, 2019, for inclusion in the official hearing record. Your responses should be sent to Katelyn Walker of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Representative Frederica Wilson (D-FL)

Dr. Slater, the National Labor Relations Act ensures that most private sector employees have the right to collectively bargain and join a union. This right has been established for more than 80 years. However, there is no corresponding federal law that grants most public sector employees the right to collectively bargain.

- Don't public employees deserve the same ability to advocate for themselves in the workplace?

Subcommittee on Health, Employment, Labor and Pensions
Legislative Hearing on – "Standing with Public Servants: Protecting the Right to Organize"
June 26th, 2019

Captain Tom Brewer, President – Professional Fire Fighters and Paramedics of North Carolina
President – Charlotte Fire Fighters Association, Local 660

Response to the Additional Questions for the Record

The Honorable Frederica Wilson (D-FL)

1.) How does the strike provision in HR 1154 impact public safety officers' ability to strike?

Brewer Response: Section 6(a) of the Cooperation Act specifically prohibits workers and labor organizations from striking. The locals in my state, along with the IAFF, support this language because strikes within the pubic safety workforce can lead to unsafe communities. As a fire fighter, my first and most important duty is to protect and serve the community and the ability to strike interferes with this duty. Providing a fair process where fire fighters can discuss workplace needs with their employer, will prevent any need to strike or stop work.

2.) Does the strike provision in HR 1154 allow public safety officers to engage in strikes over political issues?

Brewer Response: Section 6(a) of the Cooperation act specifically prohibits strikes or work stoppages that would be designed to compel an employer, worker or union to agree to the terms of a proposed contract. This language, coupled with the prohibition of striking over work-related issues, will ensure that workers must remain on the job regardless of political issues.

3.) Can you speak on the important work you all do in support of federal emergency efforts and why Congress has a role in providing baseline rights for you all?

Brewer Response: An important and unique aspect of today's fire service is that it operates on multiple governmental levels. We no longer respond to incidents just within the borders of that jurisdiction. Fire fighters regularly respond to incidents involving natural disasters, active shooters, hazardous materials, biological and explosive threats as well as national security threats. Due to this new reality, fire departments throughout states and regions must work together in partnership to meet the safety threats facing communities.

The local fire department has evolved into a crucial component of our nation's national preparedness and response system and thus, the federal government has a vital interest in promoting cooperation and partnerships between public safety agencies and first responders. Without an effective local emergency response, Homeland security is almost inevitably impaired. Therefore, the federal government has a responsibility to ensure that emergency response at the local level is as effective as possible.

4.) Mr. Brewer, how would having a minimum standard that ensures public safety officers have the right to collectively bargain help fire departments retain and recruit firefighters?

Brewer Response: Collective bargaining would strengthen our ability to recruit the very best individuals we need to help serve our community and state. Men and women would be more inclined to come work in our state if they knew that doing so would mean their voices were heard and their workplaces were safe. Additionally, collective bargaining would help in retaining workers who we have invested so heavily in to keep our communities safe.

In the city of Charlotte, we regularly lose talented professionals, men and women, to other states providing a cooperative, and thus productive and protected working environment. This type of turnover not only wastes city resources, it has an unfortunate detrimental effect on local preparedness and response.

I'd like to share an example that I experienced firsthand just a few years ago. During one of our yearly hiring rounds the city of Charlotte extended an offer for employment to an experienced fire fighter relocating from Seattle, WA. This individual had gone through the rigorous and necessary hiring steps and right before he accepted the offer something happened. I was meeting with him at one of our stations, we were discussing the job the benefits and how excited he was to be moving across the country to work in North Carolina. The topic of retirement healthcare came up and after I mentioned that in Charlotte (and many other jurisdictions throughout the state) we don't provide this specific type of coverage, he was shocked and unaware that fire fighters would not be offered this necessary benefit, especially since this type of coverage was commonplace in Seattle. After our conversation he left the station and a few days later I learned that this individual had rejected the job offer and was staying in Seattle. His reason, Charlotte fire fighters do not have and could not bargain for this type of benefit.

If workers in North Carolina have the right to collectively bargain these types of conversations could take place. Workers could discuss what they needed to best do their job and communities would be in a better position to recruit skilled workers and retain those they invest so heavily to keep.

Health, Employment, Labor, and Pensions Subcommittee Hearing
"Standing with Public Servants: Protecting the Right to Organize"
Wednesday, June 26, 2019
10:15 a.m.

July 22, 2019

Written Responses to Additional Questions
Submitted by Committee Members Following Hearing

Teague P. Paterson, Deputy General Counsel, AFSCME

Thank you, on behalf of the million-plus members of the American Federation of State, County and Municipal Employees ("AFSCME"), for the opportunity to address the committee on this important subject and for the additional opportunity to provide written responses to supplemental questions. I have set out each follow-up question below in bold typeface, and then provided a response based on my experience in the field of labor law and relations.

Question 1

Mr. Paterson, you are aware, I assume, that OSHA does not cover public employees, and only 26 states have taken advantage of the legal option to cover public employees. That means that there are over 8 million public employees in the country who have no right to a safe workplace even though they do the same work—or far more dangerous work—than private sector employees. For many of these employees, the only opportunity they have to protect their lives is through health and safety language negotiated in their contracts—where they have bargaining rights.

- **Wouldn't you agree, therefore, that for many public employees, bargaining rights are literally a matter of life and death?**

Yes, and there is certainly a lack of adequate safety and health protections for workers in the public sector. It is also correct that OSHA extends coverage to the public sector only on an opt-in basis. Although 26 states have opted-into OSHA coverage, our experience is that even in opt-in states, the state enforcement agencies place a low priority on the public sector even though public service occupations have among the highest rates of occupational injury.

There are too many examples of lethal violence committed against child protection case workers, on the job death of highway workers, exposure to illnesses and pathogens in public health care facilities because of inadequate safeguards, and other unsafe work practices resulting in death and severe injury. Public service personnel face some of the highest occupational safety risks, and this is not limited solely to first responders. In the case of public safety officers, where the risk of injury or death from violent acts can be inherent in the job, we have mitigated the threat to human life by negotiating for adequate staffing, body armor, safe practices and, in institutions, proper facility design.

Collective bargaining has been essential to addressing this problem and improving occupational safety and health in the public sector. As is typical in labor relations, the agreements negotiated between AFSCME and employers provide for safety equipment, safety procedures and ongoing committees to address workplace hazards and safe work practices. AFSCME agreements govern diverse issues which include, among other things, bloodborne pathogens, workplace violence, personal protective clothing and equipment, and ergonomics.

An important component of any effective health and safety program is a well-functioning committee structure. Through the collective bargaining relationship, workers have their own, independent source of influence and expertise. Union members can speak freely and forcefully about health and safety challenges and work with management to create and monitor the implementation of corrective actions. These benefits also flow to the safety and health of other parties who may enter the worksite: customers, service personal, contractors, patients, pupils, etc.

Workers without a voice through collective bargaining are denied the opportunity to address workplace hazards and, therefore, face greater risk of injury and death on the job. They also lack the institutional power and support to bring other hazards to the attention of management, for example environmental concerns in schools that harm students, or patient exposure to pathogens in hospitals.

The positive effect of unions and collective bargaining on workplace safety is well documented. Harvard researcher Michael Zoorob concluded that "after controlling for other variables, the statistical model finds that unions have a protective effect on workplace fatalities across the states. Specifically, a one-percentage point increase in the unionized workforce was associated with a 2.8% decline in the rate of occupational fatalities." (https://scholars.org/scholar/michael-zoorob)

- **Do you think that public employees—highway workers, prison workers, wastewater treatment plant workers, hospital workers—have a right to a safe workplace?**

All workers have the right to a safe workplace and to the abatement of any unsafe condition. No one should bear the risk of not returning home to their family after a day of work. However, in the public service, in the absence of concerted pressure, this inalienable right has not been respected or made a management priority.

An examination of injury rates compiled by the Bureau of Labor Statistics validates the need for concern and legislative action. Highway workers are almost three times as likely to suffer a nonfatal injury on the job injury as other workers. In the case of psychiatric aides, a common public sector position, nonfatal injury rates are eight times higher than other occupations. For the reasons we note, the recognition of collective bargaining rights for all public workers will lead to safer workplaces and a reduction in these injury rates.

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Teague P. Paterson, Deputy General Counsel, AFSCME

Question 2

Mr. Paterson, Wisconsin was the first state to enact a public sector collective bargaining law that gave state and local workers the ability to join unions and negotiate over the terms and conditions of their employment. In 2011, Wisconsin adopted legislation, Act 10, that eviscerated those rights for most public employees, even eliminating employees' ability to bargain over wages. Since the passage of Act 10, the people of Wisconsin have suffered greatly as teacher pay dropped 8%, which has led to a statewide shortage of qualified educators. One study conducted by E. Jason Baron found that statewide student achievement on science and math was reduced because of the massive exodus of people from the teaching profession caused by the restrictive law.

- **What do the economic and educational outcomes in the aftermath of Act 10 tell us about the role of collective bargaining in the public sector?**

There are many examples of how Act 10 lead to poorer educational and economic outcomes for Wisconsin, which is now well-documented. A detailed comparison between the neighboring states of Wisconsin and Minnesota, described and cited in my written testimony, shows that while Wisconsin was stripping rights from public employees, Minnesota was strengthening such rights. In most other respects, these two neighboring states are very similar. But over this period—since Act 10's enactment--Minnesota has outpaced Wisconsin by all metrics in term of job growth, household income, delivery of public services, and the overall expansion of the economy. With respect to education, in addition to Mr. Baron's research, David Madland and Alex Rowell of the Center for American Progress issued a November 15, 2017 report that details findings as to the dismal impact of Act 10 on Wisconsin's education system.

When one looks at education, the flow of commerce, household income, and even the bond market, its clear that collective bargaining contributes to a stable, cooperative economy and in that way, the PSFNA would mitigate the economic spillover effects caused by major disparities in how public service workers are treated in their labor relations across state lines.

Turning to your specific question regarding the role of collective bargaining in the public sector, the experience of Wisconsin following passage of Act 10 could easily have been predicted because it confirms what we already know and has been established after decades of research: Public sector collective bargaining improves the delivery, efficiency and quality of public services.

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Teague P. Paterson, Deputy General Counsel, AFSCME

Question 3

Mr. Paterson, in 2012, Michigan enacted a law that prohibited schools from deducting union dues from teachers' paychecks, even when the teacher wants to support the union and requests the deduction. This deduction should work the exact same way an employer deducts money for an employee's healthcare plan, but Michigan made this illegal with respect to union dues.

- **Doesn't this undermine teachers' ability to do what they want with their own money?**

In short, yes. Michigan's House Bill 4929 prohibited school employers from permitting employees to authorize payment of their union dues directly from their paychecks, which is the typical, standard practice that employers have been honoring for a century and is commonly referred to as dues "checkoff." Indeed, this practice is specifically authorized by all four federal labor relations statutes: The National Labor Relations Act (NLRA), the Railway Labor Act, the Postal Reorganization Act, and the Federal Service Labor-Management Relations Act (under which dues checkoff is a right).

Despite this precedent, the Michigan legislature adopted HB 4929's prohibitions on checkoff out of a purported concern that checkoff is an improper type of "employer assistance." In light of the legal framework I have described, that concern is clearly incorrect, misplaced, and pretextual. But it is also arbitrary. In Michigan, all manner of direct payment through wage deductions by public employees are administered and authorized through direct payroll deduction. Yet HB 4929 singled out only one type of payroll deduction for special treatment: union dues. In that way, the bill is overtly paternalistic, as it dictates to public employees what they can and cannot spend their money on as a result of politicians' disapproval of one type of expenditure. To be frank, that is just un-American.

Michigan is not alone in adopting these types of statutes, as the American Legislative Exchange Council (ALEC) and other corporate-backed, anti-worker organizations have made them a state legislative priority. Iowa's 2017 law, House File 291, gutted public employee bargaining rights in much the same way as Wisconsin's Act 10. Among many other things, it eliminated dues checkoff with scalpel-like precision. Section 6 of HF 291 prohibited payment through payroll deduction to "an organization of any kind in which public employees participate and which exists for the primary purpose of representing public employees in their employment relations." However, the bill permits public employers to process payroll deductions for virtually any other purpose or organization, including for the payment of dues to professional or trade associations that refrain from seeking to collectively bargain on behalf of public employees. Clearly, these bills are not being promoted and adopted as a legitimate focus of legislative attention or a justifiable exercise of legislative authority, but *only* because these laws hope to weaken working people's ability to join together for strong union representation.

The PSFNA addresses these unfair laws by ensuring that state politicians cannot toy with employees' choices as to how they spend their money, and would ensure that all state and local

employees enjoy the same right to support and fund their union as exist in the private sector and under federal law.

Question 4

Mr. Paterson, The Public Service Freedom to Negotiate Act of 2019 includes a private right of action that permits an aggrieved party to file suit in federal court after the passage of 180 days.

- **How does this provision allow public employees to ensure their rights are protected?**

Any law that lacks a means to enforce it is dead letter, and so the PSFNA rightly contains an enforcement mechanism with respect to the individual rights it protects. The 180 day "waiting period" ensures the public enforcement authority, the Federal Labor Relations Authority (FLRA), has time to consider whether to proceed with a case. This dual administrative/private enforcement burden-sharing is common under many state and federal statutes. This structure ensures the cost of enforcement does not fall entirely on the public, while also ensuring the public agency has the opportunity to proceed with significant, important, strategic or policy-oriented cases. Indeed, a major criticism of the NLRA is its lack of a private remedy, which many professors and practitioners regard as a reason for its failure to adequately protect workers' rights.

- **How does this provision comply with the Eleventh Amendment?**

The PSFNA's right of action certainly complies with the Eleventh Amendment, as I detailed in my written submission to the Committee. The Eleventh Amendment prevents congressional authorization of suits by private parties against nonconsenting states. The concern is not applicable to local governments. Under the longstanding *Ex Parte Young* doctrine, first laid down in 1908, a suit against a state "named administrator" is constitutionally permitted so long as the relief sought by the individual plaintiff is limited to a prospective injunction against an ongoing violation of federal law.

The *Ex Parte Young* doctrine is necessary to ensure the Supremacy Clause remains a meaningful provision of the Constitution, while ensuring both the letter and the intent of the Eleventh Amendment are respected. Therefore, the PSFNA complies with the Eleventh Amendment by limiting its conferral of a right of action with respect to state governments to suits naming State administrators for the purpose of enjoining actions that violate federal law, and thus embodies this well-accepted accommodation to the Eleventh Amendment.

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Teague P. Paterson, Deputy General Counsel, AFSCME

Question 5

Mr. Paterson, several states, like Wisconsin, Florida, and Iowa, have enacted legislation that requires workers vote annually for the union representatives that they have already selected. These laws measure election success based on the votes of all eligible voters, not just those voting in the election. Measuring an election win in this manner, essentially counts every voter that does not vote as a no. Many of my colleagues in Congress could not get elected if we counted votes this way.

- **How do these recertification laws harm workers?**

The proponents of mandatory "recertification" election laws argue that they promote free choice for workers. This is false. In reality, they are unnecessary, undemocratic, and devised for the sole purpose of imposing burdensome and potentially crippling costs on unions and the workers they represent. The PSFNA ensures that states cannot use harassing and rigged "recertification" procedures to burden employee rights, while protecting the right of union members to freely and fairly obtain elections to decertify or change their union if they choose.

Mandatory "recertification" elections are unnecessary.

Employees already have several legally-protected avenues to exercise their free choice to decertify a union. Under current law, employees in nearly every state can obtain an election to decertify or change their union representative by simply submitting a petition signed by 30% of the bargaining unit.[1] Additionally, unions are already required to hold frequent leadership elections, subject to significant government oversight. These near-universal rules mean that union members can exercise their choice when they choose, without being subject to continual, burdensome, and harassing recertification election procedures.

Mandatory "recertification" elections are undemocratic by design.

The procedures imposed on employees in states like Iowa, Missouri and Florida are taken nearly verbatim from the "model" being pushed by ALEC and affiliates of the State Policy Network, which have made these laws a priority to their anti-worker, anti-union agenda. As a result, the procedures they impose are rigged against union representation—designed not to reflect the will of the majority but to tip the scales against the union. Rather than following established democratic principles, these laws count absentee voters as having voted *against* union representation. In practice, this imposes a burden on unions above and beyond "majority rules," while incentivizing anti-union interests to win not via persuasion, but by depressing turnout.

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[1] This procedure is similar to that used in the private sector under the NLRA. According to the NLRB, in 2018 there were 270 decertification elections held under this procedure, 159 of which were lost by the union. National Labor Relations Board, *Decertification Petitions*, https://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections/decertification-petitions-rd (last visited July 8, 2019).

Having established that a no-show is counted as a "no" vote, these states have designed procedures that make it unnecessarily difficult to cast a ballot. For example, in a recent recertification election at Lambert Airport in St. Louis, Missouri, custodial and maintenance employees were required to log in, during certain times, to their personal computers using personal emails, even though many members did not have personal emails or computers. Workers also had to obtain a validation code through a complicated "automated" telephone system. Finally, when many tried to log on to cast their vote, the program the state used, Survey Monkey, would only register votes from certain IP addresses.

Similar problems were experienced at other recertification elections that occurred in Missouri prior to a state judge's order enjoining the law for its many violations of public employees' state constitutional rights. The Judge wrote: "If the state had to follow the election laws it imposes on unions it would grind to a halt." These laws do not stand (as they claim) for employee democracy. They are designed to impose unnecessary and undemocratic procedural hurdles on unions for the simple purpose of disempowering the workers they represent.

Mandatory "recertification" elections are intended to drain union resources.

These recertification laws also require union members to pay the state for the cost to run these mandatory, frequent recertification elections. The Members of the Committee can surely appreciate the effort required to prepare and mobilize for an election that, in order to prevail, would require a majority vote of the entire voter-eligible population. But also consider this: these laws require union members to finance the cost of the recertification election through their union dues. If political elections were conducted in the same manner, the members of the political party of the incumbent officeholder would be required to finance the cost of the election while the opposition party's supporters need only fail to show-up on election day in order to cast their vote. That is patently unfair, yet that is exactly how these recertification laws are crafted to operate with respect to union members. In practice, therefore, these laws impose a "poll tax," requiring union members to pay to simply demonstrate - time after time - their desire for a union. In Iowa, AFSCME Council 61 recently had to pay the state more than $19,000 (money which came directly from dues) to conduct recertification votes, which the union overwhelmingly won.

Aside from the financial burdens these elections place on members, union staff must allocate substantial time to educate employees regarding the votes and encourage turnout, which means less time to bargain and represent members. The burden is on unions to ensure that voters—often distributed across multiple locations and various employers—are aware of the date of the election, understand the procedures, and recognize the importance of voting. In Iowa, union staff were forced to spend months travelling across the state to ensure the union could clear the undemocratically high bar imposed by the law. In Missouri, before the law was enjoined, this drain on union resources was compounded by the notices the state deployed to inform employees of the recertification elections, which were confusing and riddled with errors.

This draining of resources and distraction from representation is exactly what was intended by the law's architects who, despite professing otherwise, evidently show no allegiance to the most basic of democratic norms.

Proponents of recertification laws rely on disingenuous justifications.

Despite the patently unfair and rigged procedures these laws impose, Mr. Messenger, Dr. Onder, and some members of this Committee argue that because Americans regularly elect their politicians, public employees should also regularly vote to maintain their union's status. This is a false analogy. In political elections, Americans are not voting *whether* to have a government, only who will represent them *in that government*. Recertification laws, on the other hand, are not asking members to vote in favor of a specific leader but if the system should exist at all. If political elections were conducted by the same rules, a failure to obtain 50% approval of the voting public would result in disbanding the government.

Also disingenuous is the often-forwarded argument that recertification elections are necessary to ascertain employees' choice regarding their union representation. As noted, all of our labor laws, as would the PSFNA, provide employees multiple opportunities to seek to decertify or change their union. But none of the recertification bills that have been proposed or passed include provisions for regularly ascertaining *unrepresented* employees' desire *to be represented* by a union. In other words, recertification laws are always one-sided, aimed at harassing union-represented employees but never offering unrepresented employees a regular and systematic opportunity to vote for union representation. If the purpose of these recertification laws was to ascertain employees' desires, and then honor them, then all unrepresented employees would similarly be afforded a regular, automatic vote to obtain union representation. I am not aware of a single legislative proposal that provides for that regular, automatic opportunity.

Recertification laws are a solution in search of a problem.

Even with the financial toll that mandatory recertification elections place on unions, experience continues to demonstrate that public-sector employees want representation. For example, in 2017, the first year the law in Iowa required recertification elections, all but one ASFCME unit voted to recertify. As for the unit that failed to achieve recertification, that was a result of the rigged process, as AFSCME garnered two-thirds of the votes cast.[2] In 2019, IBEW Local 55 received eighty-three yes votes when only fifty-two votes were required to pass the 50% threshold.[3] These elections were unnecessary, biased against the union, and unjustly diverted union resources from their intended purposes. This, of course, was the point.

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[2] Of a unit of four employees, two voted in favor of the union, one against, and the fourth failed to cast a ballot (and so was counted as a "no" vote). *See* Iowa Pub. Emp't. Relations Bd. *October Recertification Results* (2017), https://iowaperb.iowa.gov/sites/default/files/images/octoberresults_final-11-14-17.pdf.

[3] Iowa Pub.Emp't. Relations Bd. *March Recertification Results* (2019), https://iowaperb.iowa.gov/sites/default/files/documents/march_2019_election_results_0.pdf.

Teague P. Paterson, Deputy General Counsel, AFSCME

- **How does the *Public Service Freedom to Negotiate Act of 2019* protect workers from burdensome and unnecessary votes?**

The PSFNA establishes a uniform and fair basis to administer public employees' exercise of their fundamental right to join a union, which includes multiple opportunities to change or decertify their union if they wish to. These provisions are drafted in accordance with established standards that have worked well in the private sector and in the states that afford public employees a meaningful right to collectively bargain. These provisions serve the dual policy goals of ensuring employee free choice and promoting stability in labor relations, and would prohibit the costly, questionable, burdensome, undemocratic, and disruptive "recertification" elections that undermine these goals.

Representative Frederica Wilson (D-FL)

Dr. Slater, the National Labor Relations Act ensures that most private sector employees have the right to collectively bargain and join a union. This right has been established for more than 80 years. However, there is no corresponding federal law that grants most public sector employees the right to collectively bargain.

• Don't public employees deserve the same ability to advocate for themselves in the workplace?

They certainly do. Indeed, it is anomaly that some public employees currently lack such rights – an anomaly this bill would fix. Most states in the U.S. provide collective bargaining rights for public employees, and other, comparable countries all do. Numerous federal employment laws already apply to public employees: Title VII, the Fair Labor Standards Act, the Americans With Disabilities Act, and the Family and Medical Leave Act, to name just a few. This demonstrates the common understanding that public employees are *employees*, and they have legitimate interests and concerns as workers, just as private employees do. Further, public employers benefit from having a skilled, satisfied workforce with an effective voice, just as private-sector employers do. In these ways, the basic collective bargaining rights this bill provides would help improve the public service, increase labor peace, and help bolster the middle class. The bill is also consistent with a widely-held notion that collective bargaining rights for both private- and public-sector employee are fundamental human rights

[Whereupon, at 12:52 p.m., the subcommittee was adjourned.]

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