

February 6, 2013

**Testimony before the Senate Committee on Commerce
in Support of HB 2023 – Paycheck Protection**

Dear Madame Chair:

Thank you for affording me the opportunity to testify on behalf of the Kansas Chamber in support of HB 2023.

HB 2023's primary purpose is to avoid the perception of government favoritism or entanglement with partisan politics. Simply put, the government should not be involved in supporting *any* organization's political activities, regardless of their merit. Public perception of the government's partiality can undermine confidence in representative government, and for that reason alone it is necessary to keep our government wholly free of entanglement with political campaigns of any kind. Banning payroll deductions for political speech similarly furthers the government's legitimate interest in distinguishing between internal governmental operations and private speech. Additionally, HB 2023 serves the important purpose of ensuring no worker feels compelled to contribute to a cause with which they do not agree.

I have had the opportunity to review the testimony presented by the *opponents* to HB 2023, and group them into two categories: (1) Opponents who argue that the bill somehow violates First Amendment rights of free speech (it doesn't); and (2) opponents who appear to imply the bill impacts private-sector unions – e.g., IBEW or United Steelworkers (it doesn't).

A. HB 2023 is Constitutional

One consistent theme of the bill's opponents appears to be that HB 2023 would somehow violate their First Amendment rights. This, however, is incorrect. The United States Supreme Court, in *Ysursa v. Pocatello Education Assn.*,¹ recently upheld Idaho's similar statute, the *Voluntary Contributions Act*, which banned public-employee payroll deductions for political activities. There, the U.S. Supreme Court ruled as follows:

While publicly administered payroll deductions for political purposes can enhance the unions' exercise of First Amendment rights, Idaho *is*

¹ 129 S. Ct. 1093 (2009)

under no obligation to aid the unions in their political activities. And the State's decision not to do so is not an abridgment of the unions' speech; they are free to engage in such speech as they see fit. *They simply are barred from enlisting the State in support of that endeavor.*²

The Supreme Court further concluded:

The question is whether the State must affirmatively assist political speech by allowing public employers to administer payroll deductions for political activities. For the reasons set forth in this opinion, *the answer is no.*³

Currently, *every standing U.S. appellate court decision* has upheld the constitutionality of state statutes barring paycheck deductions for public employees. For example, the U.S. Court of Appeals for the Tenth Circuit – which includes Kansas – held that Utah's "Voluntary Contributions Act" was constitutional, concluding:

"[A] state "is not required to assist others in funding the expression of particular ideas, including political ones." ... Thus, when a state merely declines to assist or subsidize speech, it does not infringe upon an individual's First Amendment rights...."⁴

Just as recently as 18 days ago, the U.S. Court of Appeals for the Seventh Circuit reversed a district court judge's ruling regarding Wisconsin's law prohibiting paycheck deductions for public employees and, in so doing, specifically upheld the Wisconsin statute, ruling:

In *Ysursa*, the Supreme Court squarely held that the use of a state payroll system to collect union dues from public sector employees is a state subsidy of speech. *Id.* *As the Court explained, "the State's decision not to [allow payroll deduction of union dues] is not an abridgment of the unions' speech; they are free to engage in such speech as they see fit."* *Id.* Other circuits have reached the same conclusion.⁵

² *Id.* at 1098 (*emphasis added*).

³ *Id.* at 1098 (*emphasis added*).

⁴ *Utah Education Association v. Shurtleff*, 565 F.3d 1226 (10th Cir. 2009).

⁵ *Wisconsin Educ. Ass'n Council v. Walker*, --- F.3d ---- (7th Cir. 2013)(*emphasis added*) (citing *Utah Educ. Ass'n v. Shurtleff*, 565 F.3d 1226, 1229–31 (10th Cir.2009); *Toledo Area*

Accordingly, opponents who have falsely proclaimed HB 2023's purported unconstitutionality – but who have failed to cite to the controlling case law to the contrary – should be given no credence in this Committee's analysis.

B. HB 2023 Does Not Impact Private Sector Unions

HB 2023 adds language to Chapter 72 (regarding professional employees' organizations) and to Chapter 75 (regarding public employee organizations). It makes no mention of and does not impact Chapter 44 or in any way impact private sector unions such as the IBEW or United Steelworkers. Any testimony regarding private sector unions is irrelevant and merits no further discussion.

C. Conclusion

Just as the government should not be involved in supporting an organization's political activities by providing payroll deduction services, no business should be obligated to do so either. HB 2023 is good public policy and eliminates the government's inappropriate role in supporting any organization's political activities.

Thank you.

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By: 

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AFL-CIO Council v. Pizsa, 154 F.3d 307, 319–21 (6th Cir.1998); *S. Car. Educ. Ass'n v. Campbell*, 883 F.2d 1251, 1256–57 (4th Cir.1989); *Brown v. Alexander*, 718 F.2d 1417, 1422–23 (6th Cir.1983); *Ark. State Highway Emps. Local 1315 v. Kell*, 628 F.2d 1099, 1102 (8th Cir.1980)).