

Testimony of
F. Vincent Vernuccio, Workers for Opportunity
Senate Bill No. 511, Proponent

Madam Chairwoman and members of the committee, thank you for the opportunity to testify here today.

My name is F. Vincent Vernuccio and I am a labor policy senior fellow with Workers for Opportunity, a national project of the Mackinac Center for Public Policy dedicated to freedom of choice for public employees.

Senate Bill No. 511 ensures that public employees are informed about their First Amendment right to choose whether to pay union fees and further allows them to exercise this right at any time. This right is guaranteed to them under the U.S. Constitution and recognized by the United States Supreme Court's decision in *Janus v. AFSCME*.¹

Senate Bill 511 protects public employees by ensuring that they are informed about this right on a yearly basis, and the legislation also gives them the opportunity each year to make a fresh choice about paying the union.

It codifies the process by which an employee may exercise this right and safeguards that person's ability to exercise it at any time. Finally, Senate Bill 511 guarantees that employers will have evidence that a public employee actually wants to pay dues. It does this by having the public employees tell their employers directly that they wish to have money taken from their paycheck, instead of employers taking the union's word for it.

There is a need to make sure that the First Amendment rights of public employees are protected at all times. Some unions and even some legislatures in other states have created arbitrary "windows" to limit when public employees may resign their union membership and stop paying dues. In some cases, these windows are linked to when an employee starts working. Sometimes they are only a few weeks long, or even shorter. This puts arbitrary and complicated restrictions on public employees' First Amendment rights.

Even worse, some states have seen multiple allegations of fraud, with unions forging signatures to collect dues.²

In the past, some Kansas unions have allowed public employees to opt-out of their union at any time but still required employees who exercise that right to continue paying for another 6 months.

¹ *Janus v. AFSCME Council 31*, 585 U.S. , 2018 (June 27, 2018)

² <https://redstate.com/freedom-foundation/2022/02/16/union-forgeries-reveal-systemic-corruption-requiring-court-review-n523158>

Public employees' First Amendment rights must be protected in three ways: giving them the information necessary to make an informed decision, making the ability to exercise that decision as easy and streamlined as possible, and ensuring public employers have the necessary timely evidence to collect dues.

More than just protecting the rights of Kansas public employees, S.B 511 creates good bookkeeping practices and protects public employees' rights. It also makes sure that the state does not collect and distribute dues from employees who do not want to pay.

While we fully support S.B 511, we would also recommend some changes to it, specifically the language which informs public employees about these rights.

The legislation currently reads:

"I am aware that I have a First Amendment right, as recognized by the United States Supreme Court, to refrain from joining and paying dues to a labor union (professional employees' organization). I further realize that membership and payment of dues are voluntary and that I may not be discriminated against for my refusal to join or financially support a union. I hereby waive my First Amendment right to refrain from union membership and dues payments and authorize my employer to deduct union dues from my salary in the amounts specified in accordance with my professional employees' organization's bylaws. I understand that I may revoke this authorization at any time."

After the state of Indiana passed similar legislation in 2021, a court subsequently issued an injunction on a similar section of the bill, Indiana Senate Enrolled Act 251³. The court rejected union arguments against the annual opt-in provision, public employees having the ability leave at any time, and employers needing evidence before collecting dues. But court issued an injunction on similar language to this legislation's language informing employees of their right by what it claimed was compelled speech grounds.⁴ The court also said the law could not impinge on current contracts but all collective bargaining agreements affected by the bill expired within a few weeks of enactment so it was not an issue.

Subsequently, Indiana passed Senate Bill 297⁵ which changed the language from an affidavit to a disclaimer, essentially changing the "I am aware..." phrasing to "The State of Indiana wishes to make you aware ..."

Here is the full change in Indiana legislative language from SB 297:

"The State of Indiana wishes to make you aware that you have a First Amendment right, as recognized by the United States Supreme Court, to refrain from joining and paying dues to a union (school employee organization). Your membership and payment of dues are voluntary, and you may not be discriminated against for your refusal to join or financially support a union.

³ <http://iga.in.gov/static-documents/9/5/6/3/95633585/SB0251.04.ENRH.pdf>

⁴ See *Anderson Federation of Teachers v Rokita*, United States District Court for the Southern District of Indiana June 30, 2021 https://www.govinfo.gov/app/details/USCOURTS-insd-1_21-cv-01767

⁵ <http://iga.in.gov/legislative/2022/bills/senate/297>

By signing this form, you are agreeing to authorize your employer to deduct union dues from your salary in the amounts specified in accordance with your union's bylaws. You may revoke this authorization at any time."

The legislation also provided that it would only affect new, modified, extended, or amendment collective bargaining agreements. Indiana's governor signed the legislation into law in early March 2022 and Indiana's Attorney General Todd Rokita is arguing that the changes satisfy the unions' objections and that the case against the law is now moot.

To avoid a similar issue in Kansas, we recommend changing the affidavit language throughout S.B. 511 to one of a disclaimer similar to the one recently passed in Indiana. Further, there should be an additional clause at the end of the legislation to say it only applies to new, extended, modified, or amendment collective bargaining agreements.

Thank you for the opportunity to testify here today and I will welcome any questions.