



# TESTIMONY

February 18, 2020

## SENATE BILL 701: ON PAYCHECK PROTECTION AND COLLECTIVE BARGAINING AGREEMENTS

By Patrick Ishmael

Testimony before the Missouri Senate General Laws Committee

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### TO THE HONORABLE MEMBERS OF THIS COMMITTEE

Thank you for the opportunity to testify. My name is Patrick Ishmael, and I am the director of government accountability for the Show-Me Institute, a nonprofit, nonpartisan, Missouri-based think tank that advances sensible, well-researched, free-market solutions to state and local policy issues. The ideas presented here are my own and summarize research regarding government union reforms generally, and paycheck protection specifically, in Missouri.

Especially after the ruling in *Knox v. Service Employees International Union* was handed down by the U.S. Supreme Court in 2012, policymakers nationwide renewed their focus on what the appropriate relationship

should be between government unions and the governments with whom many collectively bargain. As I testified to the Missouri House Workforce Development and Workplace Safety Committee in 2013:

[T]he substantive question addressed in the Court's opinion . . . really boils down to this: should the burden be on a public employee to opt-out of an automatic salary deduction program whose proceeds could fund a union's political activities? Or should the burden be on the union to get employees to opt-in? Are these "free speech dollars" taken from the employee's paycheck presumptively the employee's, or presumptively the union's?

The court in *Knox* found that indeed, the burden for political dues should rest on the union to have workers opt-in—and that this money was presumptively the employee's, not the union's.

Subsequent litigation has clarified these “burden” questions further. In 2018, the court ruled in *Janus v. American Federation of State, County, and Municipal Employees (AFSCME)* that forced agency fees for government union workers were an unconstitutional infringement on employees free speech rights—that not only did workers have a right to ensure forced dues didn't go toward political activity, but they also had a right to not pay dues for anything at all as a condition of government employment.

Historically, Missouri legislators have been reluctant to compel Missouri government workers to fund union activities as a matter of statute, both pre-*Knox* and pre-*Janus*. In this respect, Missouri was ahead of the curve nationally on this workers' rights issue. As I wrote in *Missouri at the Crossroads: Government Union Law and the Path to Successful Enforcement*, published last year, Missouri Revised Statute §105.510 is reasonably clear on this point:

No [government] employee shall be discharged or discriminated against because of his exercise of such right [to form and join a union], **nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization.** [Emphasis mine]

That doesn't mean that local governments have always followed statute and legal precedent on this point closely. As part of *Missouri at the Crossroads*, a colleague and I requested collective bargaining agreements from across the state, particularly at the local level, to see the extent to which these contracts were in legal compliance, including their dues provisions. In two cases, we found Missouri political subdivisions had included language that was problematic on the question of compelled dues. Crystal City, Missouri's dues language was particularly egregious, stating:

Any present or future employee who is not a union member, and who does not make application for

membership, shall, as a condition of employment, pay to the union each month and [sic] service charge as a contribution towards the administration of this amendment an amount equal to the monthly dues.

**Employees who fail to comply with this agreement, shall be discharged by the employer within thirty (30) days after receipt of written notice to the employer from the union.**

To be clear, Senate Bill (SB) 701's provisions are specific to the frequency and manner of government employees' decision to have fees deducted from their paychecks, both for operational and political purposes. Annual and explicit written consent for these deductions is a wholly reasonable reform to protect workers.

Moreover, ensuring clarity about such dues matters—not only post-*Janus* but in the aftermath of litigation surrounding 2018's House Bill 1413—is especially important at this historic juncture. SB 701 would advance an important policy purpose and vision that empowers workers. However, as of today and despite the legislature's best efforts, that vision and purpose are muddled as a matter of law in Missouri.

At the same time, policymakers must also consider the compliance issues that plague even good reforms and stable case law. As I wrote in *Crossroads*,

any oversight regime that cannot identify all the subjects of that oversight will fail to meaningfully execute its mission. Without effective oversight, the likelihood of patently illegal contract provisions rises. That's bad for taxpayers and government workers, but it's also bad for the rule of law.

Legislators must ensure that whatever the reform, regulators have the tools required not only to identify all workers who may be implicated in or subject to a CBA, but to protect all of those workers' rights as well. SB 701 takes a strong step in this direction, but it is only one of many steps that will have to be taken to make sure government workers' rights across the state are fully safeguarded.

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*Patrick Ishmael is the Director of Government Accountability for the Show-Me Institute.*

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## RESOURCE

Ishmael, P. “Missouri at the Crossroads: Government Union Law and the Path to Successful Enforcement.” Show-Me Institute, January 2020. <https://showmeinstitute.org/publication/government-unions/missouri-crossroads-government-union-laws-and-path-successful>.



**5297 Washington Place, Saint Louis, MO 63108—314-454-0647**

**3645 Troost Avenue, Kansas City, MO 64109—816-561-1777**

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