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Vindicating Texans' Free Speech Rights Under *Janus*

State Legislation Is Needed to Stop Union Officials From Taking Money for Big Labor Advocacy From Texas Taxpayers and Civil Servants Without Their Consent

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Key Points

- Texas citizens can take pride in the fact that the laws of their state prohibited compulsory union financial support in the private and public sectors for decades before *Janus*.
- But the loopholes in Texas' general ban on collectivist unionism in government and the state's lack of a clear statutory ban on the use of taxpayer funds to cover union operating costs continue to undermine the free-speech rights of public workers and taxpayers.
- Post-*Janus*, these special privileges for government union chiefs should not be tolerated in Texas or anywhere else in the U.S.

Executive Summary

Nearly a year ago, the U.S. Supreme Court decided that government employers across the country may not deduct union dues from employees' paychecks unless the employees "clearly and affirmatively consent before any money is taken from them." Texas citizens can take pride in the fact that the laws of their state prohibited compulsory union financial support in the private and public sectors for decades before *Janus* found such coercion unconstitutional when a government agency participates in the arrangement. But the loopholes in Texas' general ban on collectivist unionism in government and the state's lack of a clear statutory ban on the use of taxpayer funds to cover union operating costs continue to undermine the free-speech rights of public workers and taxpayers. Post-*Janus*, these special privileges for government union chiefs should not be tolerated in Texas or anywhere else in the U.S.

Introduction

Last June, the U.S. Supreme Court decided that government employers across the country may not deduct union dues from employees' paychecks unless the employees "clearly and affirmatively consent before any money is taken from them." So declared Associate Justice Samuel Alito in his court opinion in *Janus v. American Federation of State, County and Municipal Employees (AFSCME) Council 31*.

Champions of individual liberty were jubilant about the high court's ruling in favor of Illinois civil servant Mark Janus and his legal team, led by National Right to Work Legal Defense Foundation staff attorney and plaintiff's Counsel of Record William Messenger. Organized labor partisans reacted with deep dismay.

For 11 years, Janus had been compelled by state law to pay so-called "agency" fees to officers of the AFSCME union and its Chicago-based AFSCME Council 31 affiliate—two organizations to which he did not belong and of which he did not approve. Had he refused, he would have been fired (Sweet and Esposito).

The *Janus* majority (in which Alito was joined by Chief Justice John Roberts and Associate Justices Anthony Kennedy, Clarence Thomas, and Neil Gorsuch) agreed with the plaintiff and his attorneys that certain pro-Big Labor laws in Illinois and other states are unconstitutional. Such laws violate the First Amendment, explained the *Janus* court, when they force civil servants like Mark Janus, as a job

continued

condition, to financially support advocacy by union officers directed at public officials.

In addition to rendering all Illinois labor laws authorizing compelled employee financial support for unions in the government sector unenforceable, *Janus* has neutralized similarly coercive laws on the books in more than 20 other states.

Granting a "Private Entity" Taxation Power Over Public Workers "Undoubtedly Unusual"

It was just more than four years ago, in March 2015, that Mark Janus, then a child support specialist at the Illinois Department of Health Care and Family Services, began pursuing a case, with two other plaintiffs, challenging forced union dues and fees as a condition of public employment on First Amendment grounds ("*Janus v. AFSCME* – A Foundation Victory for Worker Freedom").

Originally, Janus was an intervenor in a case brought by then-Illinois Gov. Bruce Rauner. But when Rauner was found by a court to lack standing, Right to Work attorneys successfully sought to add Janus as a party in the litigation. Throughout the entire court battle, he was represented by staff attorneys for the Right to Work Foundation, as well as the Winston & Strawn law firm and the Liberty Justice Center in Chicago.

For four decades before the *Janus* court finally acknowledged that public-sector forced union dues and fees are unconstitutional, federal courts openly conceded they were constitutionally problematic. For example, the late Justice Antonin Scalia admitted in the 2007 majority opinion for the Right to Work Foundation-won *Davenport* case that it is "undeniably unusual for a government agency to give a private entity the power, in essence, to tax government employees" (*Davenport v. Washington Education Association*).

It was in another Foundation case, 1977's *Abood v. Detroit Board of Education*, that the Supreme Court originally sanctioned this "undeniably unusual" privilege for government union bosses. *Abood* gave a judicial wink to forced financial support for government unions' bargaining-related activities when union officials are granted monopoly power to "represent" employees who do not want a union along with employees who do.

If legislators grant union officials the latter privilege, theorized Justice Potter Stewart while writing the *Abood* opinion, legislators must also have the option to empower union bosses to force unwilling workers to pay union dues or fees as a condition of employment. Stewart admitted all the same that compulsory payments to unions may well "interfere in some way with an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit" (*Abood*).

For many years, federal courts swallowed Big Labor's monopoly-bargaining excuse for public-sector forced union dues. But the *Janus* opinion, informed in part by the meticulous legal arguments and exhaustive research furnished by the plaintiff and friends of the court who submitted briefs backing his position, exposed it as unsupportable.

Union Bosses Can and Do "Advance Bargaining Positions" That Hurt Many Employees

The *Janus* majority implicitly rebuked government union bosses and the justices who sided with them for having ignored the plaintiff's compelling argument that, as a consequence of union monopoly bargaining, he is "like a person shanghaied for an unwanted voyage." There is no respectable rationale for forcing civil servants like Mark Janus to give money to a private party for being taken to a place they would prefer not to go, the court concluded.

At the same time, *Janus* did not directly question *Abood*'s dubious premise that public-sector monopoly bargaining may advance "compelling government interests." The ruling did acknowledge that designating "a union as the employees' exclusive representative substantially restricts the rights of individual employees":

> *Among other things, this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer.*

In a narrow legal sense, the union is required, in return for the special monopoly-bargaining privileges it is granted by law, "to provide fair representation for all employees in the unit. ..." (*Janus*). But this does not remotely mean that all employees benefit equally, or benefit at all. As even dyed-in-the-wool proponents of compulsory unionism admit at times, Big Labor monopoly bargaining can and frequently does benefit some employees at the expense of others.

One notable example occurred during the briefing stage of *Friedrichs v. California Teachers Association*, a pre-*Janus* challenge to the constitutionality of forced employee financial support for government unions that was heard by the Supreme Court in January 2016. (After Justice Antonin Scalia died on February 11, 2016, the eight remaining justices deadlocked, 4-4, on the free-speech question at issue in *Friedrichs*, leaving the matter unresolved until the open seat was filled and the substantially similar *Janus* case was brought before the court.)

In *Friedrichs*, then-California Attorney General Kamala Harris (now a U.S. senator) vigorously urged the Supreme Court to continue allowing the extraction of compulsory union dues and fees from civil servants in her state and other states. But she did not contest the evidence offered by the educator petitioners in the case that union bosses often exploit their monopoly-bargaining privileges to prevent employers from rewarding employees for their extra efforts and/or their unusual talents.

Indeed, Harris and the eight other California legal officers who joined in her brief on writ of certiorari in *Friedrichs* flatly conceded that union officials "do have substantial latitude at times to advance bargaining positions that ... run counter to the economic interests of some employees" (*Brief for the Attorney General of California*).

Harris, California Solicitor General Edward DuMont, and their fellow apologists for forced financial support for government unions generally, and the California Teachers Association (CTA) union in particular, could hardly have contended otherwise.

In September 2015, just two months before Harris's final *Friedrichs* brief was submitted, the attorneys for the plaintiffs furnished the court with impeccable evidence that large numbers of teachers are economically harmed by union monopoly bargaining that came directly from the official handbook of the National Education Association (NEA). The NEA is America's largest teacher union, as well as a *Friedrichs* respondent and the parent union of the CTA, the principal respondent.

The *NEA Handbook* passages quoted by elementary school teacher Rebecca Friedrichs and her fellow plaintiffs are largely intended to give marching orders to the agents of the NEA and its state and local subsidiaries who negotiate teacher contracts with school districts.

National Teacher Union Categorically Opposed to Performance-Based Compensation

"Respondent Unions advocate numerous policies that affirmatively harm [many] teachers...," charged the plaintiffs, represented by a team of lawyers led by Michael Carvin of the Cleveland-based firm Jones Day:

> *NEA considers any "system of compensation based on an evaluation of an education employee's performance" to be "inappropriate" and "opposes providing additional compensation to attract and/or retain education employees in hard-to-recruit positions" (*Brief for the Petitioners*).*

Teachers who "care more about rewarding merit than protecting mediocre teachers" should "oppose these policies," concluded the *Friedrichs* plaintiffs. And teachers

> *who specialize in difficult subjects (like chemistry or physics), but are trapped in union-obtained pay systems that stop them from outearning gym teachers, [should also oppose such policies].*

Well aware of such indisputable facts, the *Janus* majority refused to take too seriously the concern of Justice Elena Kagan, and the three other justices who joined in her dissent, about the fact that, as a consequence of the ruling, "public employee unions will lose a secure source of financial support" (*Janus*).

Any disruptions caused to union officials by the loss of forced payments from nonmembers are outweighed, Alito retorted, by the "considerable windfall" Big Labor had received for several decades as a consequence of *Abood*.

> *It is hard to estimate how many billions of dollars have been taken from [union] nonmembers and transferred to public-sector unions in violation of the First Amendment. These unconstitutional exactions cannot be allowed to go on indefinitely.*

With the evident aim of casting a decisive blow against longstanding and systematic violations of public employees' freedom of speech, the *Janus* majority was unambiguous about exactly what is needed to bring state labor laws and practices into accord with the Constitution:

> *Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the [public] employee affirmatively consents to pay.*
>
> *By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed.…*
>
> *Unless [public] employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.*

Unfortunately, this blunt admonition to state policymakers is today being blatantly ignored in a number of jurisdictions across the country. Often with the active assistance of sympathetic politicians, union bosses who face the potential annual loss of hundreds of millions or even billions of dollars in coerced dues and fees because of *Janus* are attempting to circumvent it.

One common technique to deter civil servants from exercising their *Janus* rights has been to put tight restrictions on *when* a union member who disagrees with the stances taken by organized labor bosses can cut off financial support for the union by resigning. In New Jersey, for example, legislators enacted a law in May 2018 that limits the time in which K-12 teachers and other state and local public employees can cease having union dues deducted out of their paychecks to a 10-day window out of the entire year (Waters).

"Pay if You Join, Pay if You Don't Join"

At this writing, it remains undetermined whether Big Labor politicians in the Garden State will be able to get away with prohibiting many public employees from exercising their First Amendment rights under *Janus* for 355 or 356 days out of the year. Last November, two schoolteachers from Monmouth County, New Jersey, filed a federal class action complaint with complimentary legal help from Foundation attorneys. They aim to get the state's recently adopted restrictions on union resignations overturned in court.

The plaintiff teachers, Susan Garra Fischer and Jeanette Speck, never wanted to join the highly political New Jersey Education Association (NJEA/NEA) in the first place. But they both became NJEA members at the time they were hired because, even if they had not, they would have been forced to pay fees that were nearly as high as full union dues anyway. As Ms. Fischer has explained to one journalist:

> *I grew up in Italy. There, we call this "extortion." Pay if you join, pay if you don't join. There's no choice (Waters).*

Over the course of her 30 years as an Italian teacher in New Jersey public schools, Ms. Fischer estimates that she has involuntarily ceded $30,000 from her hard-earned salary to national, state, and local government union bosses. When she and Ms. Speck (a social studies teacher) found out about *Janus* last summer, they could not have been more pleased. Ms. Fischer recalls that she read through the entire 82-page decision twice. The two educators were convinced their days of being forced to bankroll government unionism were finally over (Waters).

They were wrong. Months after they submitted their resignations, Ms. Fischer and Ms. Speck were still being forced to pay union dues as a job condition. But now, with Right to Work attorneys' help, they are pursuing a federal class action complaint with the aim of getting back the forced dues that were seized from them after *Janus* and after they had provided notice to union bosses and school officials that they did not consent to having any more money for the NJEA and its parent organization, the NEA union, siphoned out of their paychecks.

Another goal is to permanently enjoin the state of New Jersey from maintaining and enforcing its statutory provisions that bar civil servants from exercising their right to stop paying money to a union they do not want roughly 97 percent of the time.

As of early February 2019, according to a personal communication from Right to Work Foundation attorney Heidi Schneider to the author of this paper, *Fischer v. Murphy* was one of 29 cases being litigated by Foundation attorneys on behalf of employees who were either partially or completely unable to exercise their *Janus* rights without going to court. Another 43 *Janus*-related cases were being litigated by non-Foundation lawyers.

Thanks to the efforts of the Foundation and other like-minded attorneys and employees who treasure their right to work, within the relatively near future federal courts may well specify that public employees who are union members, but never wanted to be or no longer want to be, may begin exercising their First Amendment right not to bankroll Big Labor advocacy at any time All they will have to do is resign from the organization and communicate their wish not to fork over any dues or fees to it.

Unfortunately, if restrictions on union resignations do not pan out as a *Janus* countermeasure, union-label legislators in a number of states may resort to the "nuclear option" of redirecting taxpayer money that would otherwise go to public workers' paychecks to cover union officials' operating expenses.

Pending Oregon Legislation Would Institute Direct Taxpayer Funding of Unions

Before the scheduled conclusion at the end of June of Big Labor-friendly Oregon's 2019 legislative session in Salem, union lobbyists are reportedly expected to push hard for passage of House Bill 2643, a bill that would enable government union bosses to maintain or even increase their revenue flow no matter how many members they lose.

Although HB 2643 is officially sponsored by Rep. Paul Holvey (D-Eugene), it was reportedly actually drafted by Oregon School Employees Association (OSEA) union lawyer Mike Tedesco (Wieber).

Holvey/Tedesco would impose a yet-to-be determined assessment on all public employers for every employee under their authority who is subject to union monopoly bargaining. Public employees would fork over these assessments to the Oregon Employment Relations Board, which would then funnel all the money to government union coffers.

Union officials would not be required to perform any service whatsoever for taxpayers in exchange for the taxpayer money, which, according to this writer's personal estimate, could easily add up to $100 million or more a year.

As a *Janus* countermeasure only a few hours after *Janus* was announced, Harvard professors Ben Sachs (a former union lawyer) and Sharon Block (previously appointed by President Obama to the National Labor Relations Board) proposed funding government unions directly with tax dollars. This year, along with HB 2643 in Oregon, a Hawaii measure (Senate Bill 487, requiring public employers to "directly reimburse" the "employee organization for costs germane to collective bargaining") based on the Sachs-Block concept is under legislative consideration.

But this indisputably radical response to *Janus* is controversial even within union officialdom. Last July, Lee Saunders, the president of the national union sued by Mr. Janus and his attorneys, poured cold water on the idea:

> *Direct payments from the employer to the union are prohibited in the private sector because they compromise the independence of the union. No experienced union negotiator would want his or her management counterpart to literally control union revenue. The union must belong to the workers, and they must pay for their union so they can own it. A direct payment from the government employer will also undermine the union's credibility with its own members. If the union makes difficult decisions to settle a contract in tough fiscal times, will workers suspect it was to preserve the union's "payoff" from the boss? (Saunders)*

Saunders succinctly stated why organized labor partisans should have, at a minimum, serious qualms about following the path suggested by Sachs and Block. It may well be that, at least for the time being, most government union officers in most parts of the country agree with him. Resistance on the part of at least some government unions may explain the quiet demise of a summer 2018 proposal by New York Assemblyman Richard Gottfried (D-Manhattan) to allow unions to "include collective-bargaining costs in their contracts with government agencies" to replace the mandatory fees barred by *Janus* (Hicks).

On the other hand, Manhattan Institute Senior Fellow and City College of New York professor Daniel DiSalvo, an analyst of government union bargaining and politics, believes that, if pro-right-to-work litigants ultimately deny union chiefs the ability to hinder membership resignations through "window periods" and other such tactics and they "find their treasuries depleted," union-allied lawmakers will probably turn to the Sachs-Block option (DiSalvo).

Austin Taxpayers Pay Firefighters to Conduct Union Business Rather Than Protect the Public

The fact is, federal, state, and local taxpayers across the country are *already* subsidizing a wide range of government union activities through so-called "official time" arrangements. Texas is no exception.

In a number of jurisdictions across the Lone Star State, public-safety union officials have taken advantage of a loophole in the Texas statute that prohibits "exclusive" union bargaining in the government sector. Under Texas' Fire and Police Employment Relations Act (FPERA), originally adopted in 1973, public-safety unions may gain the power to act as the monopoly-bargaining agents for front-line employees in political subdivisions of the state on matters concerning their pay, hours, and other conditions of employment (Greer).

Since the adoption of the FPERA, now found in Sec. 174.023 of the Texas Local Government Code, 17 cities throughout the state have passed referenda giving the green light for union exclusivity in fire departments, and roughly 30 cities have acquiesced to the unionization of their police departments (Galveston Firefighters Association).

Through their monopoly-bargaining privileges, public-safety unions in multiple jurisdictions throughout Texas have secured employment contract provisions that allow government workers who are also full- or part-time union officers to "receive their full salaries at taxpayer expense" while they "perform union business." It has been estimated that the total annual cost to Texas taxpayers of "official time" (also known as "release time") subsidies to Big Labor is approaching a million dollars (Pulliam 2016).

In Austin, for example, police, fire, and Emergency Medical Service (EMS) union officials have secured release-time provisions in the workplace contracts they forged with public-safety departments. Thanks to a release-time deal, the president of the Austin Firefighters Association union (AFA), also known as Local 975 of the International Association of Fire Firefighters (IAFF), "is allowed to perform exclusively union business on a full-time basis" even as the taxpayers of Austin pay his salary. The part-time work other AFA officers do for the union is also funded by Austin taxpayers (Goldwater Institute).

Every year, Austin is "paying for whole days of employee time to be spent benefitting the union":

> *The Austin-AFA contract allows the president of the firefighters' union and other union members to use ABL ["Association Business Leave"] for any activities that directly support the mission of the association. These activities include time spent in collective bargaining negotiations, state and national lobbying, and political activities related to wages, hours, and work conditions for AFA members. ABL is also used for adjudicating grievances, attending dispute resolution proceedings, addressing cadet classes during cadet training, and attending union conferences and meetings. The City is therefore using taxpayer funds to subsidize union activities that increase the burden on taxpayers (Goldwater Institute).*

If even the national president of the AFSCME union recognizes that direct payments from public employers to government unions to cover their operating costs are bad policy, one might suppose that it would be relatively easy in right-to-work Texas to put a stop to all official time, release time, ABL, and other similar schemes that allow full-time and part-time union officers to collect their taxpayer-funded salaries and benefits for conducting union business, rather than serving the public.

But despite Texas' reputation for resisting the demands of Big Labor, official time appears for now, at least, to be an entrenched special privilege for a number of the state's government unions.

Several years ago, two Austin residents who pay property and sales taxes in the city and pay sales taxes to the state of Texas did file suit against Local 975 and then-Austin City Manager Marc Ott, seeking both a judgment that all the release-time provisions in the contract between the union and the city are unconstitutional and an enjoinment of their further enforcement. Plaintiffs Jay Wiley and Mark Pulliam, along with their attorneys (both affiliated with the Phoenix, Ariz.-based Goldwater Institute), contend that release-time deals violate the "gift clause" provision of the Texas Constitution (Pulliam 2016).

Austin Union Bosses Seek More Than $100,000 From Citizens Who Are Challenging Release Time

Today the case is still pending. Wiley and Pulliam have yet to win any judgment blocking release-time deals. And last year the AFA filed a motion seeking to recover "more than $100,000 in attorneys' fees and costs, plus 'appropriately stringent' sanctions amounting to twice the attorneys' fees sought," from the plaintiffs. Lawyers for the Local 975 hierarchy outrageously claim that the Texas Citizens Participation Act, a 2011 statute designed to stop the use of litigation to infringe on a citizen's right to speak, associate, and petition freely, immunizes them from lawsuits against release-time contract provisions (Pulliam 2018).

The uphill battle Wiley and Pulliam face (even with state Attorney General Ken Paxton weighing in on their behalf) suggests that legislation, rather than litigation, is the simplest and most efficient way for concerned taxpayers in the Lone Star State to put a stop to deals between public employers and government unions that force them to bankroll the advocacy of a private organization with which they may disagree.

In 2016, the Connecticut-based Yankee Institute for Public Policy put forth model legislation prohibiting tax-funded union activity by state and local public employees (Kovacs). This model bill could form the basis for Texas legislation to halt promptly the abuses Wiley and Pulliam have been seeking to stop for several years through litigation. There is no obligation under the Texas Constitution or the U.S. Constitution for Texas public employers to provide any form of union business leave in the workplace agreements they forge with union officials. On the other hand, official time schemes that require taxpayers to subsidize advocacy by private labor unions that is directed at public officials are questionable under the U.S. Constitution post-*Janus*, in addition to arguably being in violation of the Texas Constitution's gift clause.

Even if Texas public-safety union officials are prevented by statute from exploiting the special bargaining privileges the FPERA authorizes for them to get taxpayers to cover a portion of their operating costs, those privileges may still be incompatible with the First and Fourteenth Amendments.

In January, the Massachusetts Supreme Judicial Court heard oral arguments in *Branch v. Commonwealth Employment Relations Board*. This state suit, brought forth by four public educators in the Bay State represented by Right to Work Foundation staff attorney Bruce Cameron, raised important federal constitutional issues that are clearly relevant in any state that, like Texas, permits "exclusive" union bargaining in at least some government workplaces.

Support Big Labor Politics, or Give Up Your Workplace Voice and Vote

In Austin as in Boston, public-safety employees who do not wish to join a union are prohibited from dealing directly with their employer on key matters concerning their jobs. And such independent-minded workers may also be denied the right to vote on the workplace contract crafted by union bosses, endowed with monopoly-bargaining privileges, and their employer. Under the FPERA and other state government-sector monopoly-bargaining laws, employees are

legally blocked from having any say whatsoever regarding major workplace matters unless they join a union and help bankroll its ideological activities.

By repealing the FPERA, Texas lawmakers could remove the statutory obstacle that currently denies an employee who is not a union member the option to deal directly with the employer regarding his or her job terms and conditions, even if the employer is otherwise perfectly willing to do so.

In a judicial brief filed on behalf of the *Branch* plaintiffs last summer, Cameron explained that none of his clients wants to be subject to so-called "exclusive" union representation. In fact, lead plaintiff Ben Branch believes that the Massachusetts Teachers Association (MTA) union officials who are empowered to be his monopoly-bargaining agents make it harder to "weed out ineffective and unproductive faculty" at the University of Massachusetts Amherst, where he is employed, and thus increase the workloads for other faculty (*Appellants Post-*Janus *Replacement Brief*).

As nonmembers, the plaintiffs are barred from attending most MTA meetings. And they are not allowed to "vote on [the] election of officers, bylaw modifications, contract proposals, or bargaining strategy" of the MTA, even though it has monopoly power to speak for members and nonmembers. In practice, the monopolistic labor laws of Massachusetts and other states tell civil servants to support Big Labor politics, or give up your workplace voice and vote. (In April, the Supreme Judicial Court rejected the *Branch* challenge to union monopoly bargaining in the government sector. As this paper is written, the plaintiffs have not yet decided whether they will file an appeal to the U.S. Supreme Court.)

In Texas today, the FPERA sends the same coercive message to public-safety employees in dozens of jurisdictions. And it is not the only loophole lawmakers have punched in Texas' general ban on monopolistic unionism in the government sector. Sec. 146.003 of the Local Government Code authorizes public employers in municipalities with populations of 1.5 million or more to "enter into mutual agreement" with a union "recognized ... as the sole and exclusive bargaining agent for all covered employees..." (Greer). Currently, this loophole affects Houston and San Antonio, and Dallas could pass the 1.5 million threshold in the future.

In *Branch*, the plaintiffs asked the state Supreme Judicial Court to bar union monopoly bargaining insofar as it is exploited to coerce public workers into supporting Big Labor political speech. In their own way, Texas public-safety unions are just as political as the MTA union. In 2018, for example, officers of the San Antonio Professional Firefighters Association (SAPFA) spent more than $500,000 to pay a crew of professional political operatives to get three measures they favored on the November ballot in the city (Rivard). Two of the three SAPFA-backed amendments to the city charter, including one that "gives the firefighters' union sole authority to declare an impasse in contract negotiations and submit the dispute to binding arbitration," were adopted (Baugh).

'A Significant Impingement on Associational Freedoms'

There is nothing currently in Texas statutes to prevent officials of the SAPFA and other government unions with monopoly-bargaining privileges from wielding those privileges as a cattle prod to sway otherwise reluctant workers to become union members and support union electioneering and other ideological activities with their dues money.

Regardless of whether the *Branch* ruling is appealed, the questions the plaintiffs in this case raised about how government-sector union exclusivity penalizes civil servants in their workplace lives for refusal to support organized labor political advocacy are unlikely to go away. After all, in *Janus* the Supreme Court recognized that requiring an individual public employee to accept a union as his or her bargaining agent is in itself "a significant impingement on associational freedoms that would not be tolerated in other contexts," even when the union does not exploit this privilege for political advantage. If Texas public policy continues to tolerate herding certain government employees into union collectives, there will be the potential for *Branch*-style litigation in Texas.

Texas citizens can take pride in the fact that the laws of their state prohibited compulsory union financial support in the private and public sectors for decades before *Janus* found such coercion unconstitutional when a government agency participates in the arrangement. But the loopholes in Texas' general ban on collectivist unionism in government and the state's lack of a clear statutory ban on the use of taxpayer funds to cover union operating costs continue to undermine the free-speech rights of public workers and taxpayers.

Post-*Janus*, these special privileges for government union chiefs should not be tolerated in Texas or anywhere else in the U.S.

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