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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
LABOR AND INDUSTRY COMMITTEE

RYAN OFFICE BUILDING
ROOM 205
HARRISBURG, PENNSYLVANIA

PUBLIC HEARING
PUBLIC-SECTOR UNION REFORM

MONDAY, NOVEMBER 15, 2021
10:00 A.M.

BEFORE:

- HONORABLE JIM COX, MAJORITY CHAIRMAN
- HONORABLE GERALD MULLERY, MINORITY CHAIRMAN
- HONORABLE ERIC DAVANZO
- HONORABLE TORREN ECKER
- HONORABLE BARBARA GLEIM
- HONORABLE JAMES GREGORY
- HONORABLE RICH IRVIN
- HONORABLE MIKE JONES (VIRTUAL)
- HONORABLE DAWN KEEFER
- HONORABLE RYAN MACKENZIE
- HONORABLE LORI MIZGORSKI
- HONORABLE ERIC NELSON
- HONORABLE MICHAEL PUSKARIC (VIRTUAL)
- HONORABLE DAVID ROWE

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ALSO PRESENT:

JOHN SCARPATO, EXECUTIVE DIRECTOR
JONAS RICCI, RESEARCH ANALYST
MCCLAIN FULTZ, RESEARCH ANALYST
JENNIFER DODGE, ADMINISTRATIVE ASSISTANT II

HALEY SALERA, EXECUTIVE DIRECTOR
EVAN FRANZESE-PETERSON, RESEARCH ANALYST

BRENDA J. PARDUN, RPR
REPORTER - NOTARY PUBLIC

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MAJORITY CHAIRMAN COX: Good morning. I'd like to call this meeting of the House Labor and Industry Committee to order. And at this time, I'd ask that anyone who is able to please rise and join us in the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited.)

MAJORITY CHAIRMAN COX: Good morning. I'd like to welcome everyone to this at hearing of the House Labor and Industry Committee. I'd like to remind everyone that the meeting is being recorded, and so I would ask that all members and guests please silence their phones and any electronic devices.

I'm going to start by asking Jen to call the roll.

(Whereupon, roll call was taken.)

MAJORITY CHAIRMAN COX: All right. I called this hearing to discuss several pieces of legislation that would reform our laws related to public-sector unions.

I do want everyone to know that, at the outset, both PSEA and AFSCME were invited

1 to send a member to the panel, we were hoping
2 to have two union voices on the panel, but
3 they declined to participate.

4 We then reached out to the minority
5 chairman's office to ask if other unions or
6 witnesses might want to offer an alternative
7 point of view from what these -- these bills
8 propose and what the other testifiers would
9 offer, but they were not able to secure anyone
10 to testify as well.

11 Because of that, the hearing is going
12 to appear to be lopsided. And, again, it was
13 not from lack of effort on our side. They
14 were invited, and we did make efforts to work
15 to make sure that all voices were heard on
16 this issue.

17 We're going to move on with the
18 hearing. We have received testimony from a
19 handful of organizations and some individuals
20 as well. We received testimony from L and I,
21 the Office of the Administration, CCAP, and
22 municipal league -- Pennsylvania Municipal
23 League. So, those are a few received. And I
24 suspect we'll probably continue to receive
25 additional comments beyond today.

1 At this point, I'm going to kind of
2 describe the layout of the hearing, and then
3 I'll offer minority chairman the opportunity
4 to make a few comments as well.

5 We're going to start off, as you can
6 see by the agenda, we're going to have
7 individuals who have various pieces of
8 legislation describe their legislation, going
9 to be a brief description, it's not going to
10 be a full understanding. The legislation is
11 available in the packets and so forth.

12 And then we are going to move to
13 individuals who are testifying. There won't
14 be questions and answers for those who have
15 bills that are being prime sponsored today.

16 So, with that, I will turn to
17 minority chairman, Chairman Mullery, to see if
18 he has any comments at the outset.

19 MINORITY CHAIRMAN MULLERY: Thank
20 you, Mr. Chairman.

21 Before I offer my very brief remarks,
22 I will be submitting two letters to the
23 committee, one on behalf of the Democrat
24 members of this committee, and another from
25 the CLEAR Coalition. Those letters will

1 outline the issues both my members and those
2 represented by Clear have with the bills on
3 today's agenda.

4 We believe that these bills are more
5 appropriate for a Republican policy committee
6 than this standing committee. And I imagine
7 that is why no public employer groups have
8 chosen to participate today.

9 We believe this committee should be
10 talking about ways to strengthen our workforce
11 and getting Pennsylvanians back to work and
12 considering bills that address those serious
13 issues currently facing both our workers and
14 our employers. And if there is anyone in the
15 room today that wants to hear about those
16 priorities, you can join me downstairs in the
17 lobby of the Ryan Office Building right now,
18 as I will be submitting my leave, along with
19 all of those of my Democratic members.

20 Thank you, Mr. Chairman.

21 MAJORITY CHAIRMAN COX: I'll give a
22 few moments for all of the Democratic members
23 and staff to depart if that is their choice.

24 I am in receipt of Chairman Mullery's
25 notes and CLEAR Coalition's response as well.

1 At this time, I'd like to thank the
2 members who are able to be here today. We do
3 have one member, Representative Klunk has a
4 conflict. She's chairing a meeting of the
5 Family Law Subcommittee with the Judiciary
6 Committee, so she's not going to be able to be
7 here today. And after the other members have
8 described and talked about their bills for a
9 few moments, my executive director, John
10 Scarpato, will provide an overview of
11 Representative Klunk's House Bill 2042.

12 So, at this time, I'm going to
13 introduce the first member, and we will move
14 on. I'll call on each individual as we go
15 through, but we're going to start with
16 Representative David Rowe, prime sponsor of
17 House Bill 844 and House Bill 845.

18 Senator Rowe, when you're ready.

19 REPRESENTATIVE ROWE: Thank you very
20 much, Mr. Chairman.

21 Mr. Chairman, House Bill 844, which I
22 sponsor, corrects a threat to public
23 employees' privacy. Currently, public
24 employees' sensitive information, including
25 Social Security numbers and home addresses, is

1 routinely handed over to private organizations
2 like public-sector unions simply at the union
3 official's request. This is, in my opinion, a
4 gross violation of privacy.

5 This process opens public employees
6 up to potential mishandling of their sensitive
7 information. The consequences could include,
8 on the best case, unwanted solicitation, on
9 the worst, even identity theft. And ending
10 this practice will preserve employee privacy.

11 Under my bill, employees will, of
12 course, still have the option to share that
13 private information voluntarily if they so
14 choose. Employee privacy should not be
15 treated as just another bargaining chip during
16 contract negotiations. It should be protected
17 at all costs.

18 I also co-sponsor -- or I'm the prime
19 sponsor of House Bill 845, a much-needed
20 transparency bill that will give the public
21 greater access to how their hard-earned money
22 is being spent. As it stands, collective
23 bargaining agreements costing taxpayers
24 billions of dollars are negotiated without
25 public review or oversight. And my

1 legislation shines light on this process by
2 making those agreements accessible online,
3 along with cost estimates, both two weeks
4 before and thirty days after they are signed.

5 In addition, all proposed collective
6 bargaining agreements and related documents
7 would be subject to the Right to Know Law.

8 Transparency and accountability are
9 fundamental principles of good government, on
10 which I hope we can all agree. This
11 legislation will give the public a view into
12 how their money is being spent before their
13 names are signed on the dotted line. This
14 will help ensure that public officials are
15 representing taxpayers' interests and spending
16 their money effectively.

17 I would encourage the committee to
18 support these bills, which protect employee
19 privacy and promote government transparency.
20 And I would be happy to work in this -- work
21 on these bills in a bipartisan manner. I
22 would have hoped that transparency could have
23 been a bipartisan effort, but, unfortunately,
24 it seems our colleagues are more interested in
25 the optics and the politics of it at present.

1 So, thank you, Mr. Chairman.

2 MAJORITY CHAIRMAN COX: Thank you,
3 Representative Rowe.

4 Next, we have Representative Ryan
5 Mackenzie, the prime sponsor of House Bill
6 2048.

7 Representative Mackenzie.

8 REPRESENTATIVE MACKENZIE: Great.
9 Well, thank you, Mr. Chairman.

10 House Bill 2048 would prohibit
11 payroll deductions from public-sector
12 employees for purely political purposes. So,
13 it's hard to believe, but in current law, it
14 is allowed for individuals to make voluntary
15 contributions to purely political entities
16 through the government payroll system. There
17 is lots of different deductions which are
18 made, which I think we aren't questioning,
19 which have merit -- for union dues deductions,
20 for insurance company payments, to financial
21 institutions, charitable organizations -- but
22 this is the only instance where purely
23 political money is moving through a government
24 system. To me, that just strikes me as
25 running afoul of the bright line that has been

1 drawn between government and political
2 activities.

3 So, this legislation would put that
4 prohibition in place. They could --
5 individuals would still be free to make those
6 political contributions on their own outside
7 of the government payroll system. And we
8 would also make exemptions for current
9 collective bargaining agreements that are in
10 place, and also the legislation would not
11 apply to public employees that cannot strike
12 under Act 195 or Act 111 of 1968, which are
13 the policemen and firemen collective
14 bargaining agreements.

15 So, with that, look forward to the
16 discussion on this very common sense
17 legislation.

18 And thank the chairman again.

19 MAJORITY CHAIRMAN COX: Thank you,
20 Representative Mackenzie.

21 At this time, I'd like to call on
22 Representative Dawn Keefer, prime sponsor of
23 House Bill 2037.

24 Representative Keefer.

25 REPRESENTATIVE KEEFER: Thank you,

1 Mr. Chairman.

2 House Bill 2037 amends Act 195 to
3 require the PLRB to hold secret ballot
4 certification elections to determine if the
5 majority of employees in a collective
6 bargaining unit want to continue
7 representation.

8 Currently, under Act 195, it has left
9 new employees without a voice or say in their
10 professional representation. Once their board
11 has been elected or they made their
12 selections, they don't hold these elections
13 again. So, many of the existing members never
14 voted on the current representation that they
15 have.

16 My legislation would require them to
17 hold these recertification elections
18 approximately every six years. And if the
19 majority of the voting employees in the
20 collective bargaining unit elect not to
21 continue representation, the collective
22 bargaining agreement will continue. And --
23 will continue but the duties of the current
24 representation will terminate. So, it's just
25 giving the voice back to those who are

1 actually being represented.

2 Thank you.

3 MAJORITY CHAIRMAN COX: Thank you,
4 Representative Keefer.

5 I've also asked the prime sponsor of
6 House Bill 2036, Representative Greg Rothman,
7 to join us up here as well, as a prime sponsor
8 of one of these bills. He's actually the only
9 member who has one of these bills who's not on
10 the committee. So, I appreciate his interest
11 in this issue.

12 And at this time, I'd like to call on
13 Representative Rothman to provide a brief
14 synopsis of his bill.

15 REPRESENTATIVE ROTHMAN: Good
16 morning. And thank you, Chairman Cox. Thank
17 you for allowing me to speak and for holding
18 this very important hearing today.

19 My legislation is House Bill 2036. I
20 also introduced similar legislation last
21 session. This legislation would make an
22 important change to the Public Employee
23 Relations Act to allow members of
24 public-sector unions to terminate their
25 membership at any time. Keep in mind, the

1 current law only allows a fifteen-day window,
2 and, yet, you can join a union anytime
3 throughout the year or throughout the
4 collective bargaining period.

5 The current law requires only a
6 fifteen-day period before the expiration of
7 the collective bargaining agreement in which
8 members are allowed to resign their
9 membership. This very limited window is not
10 required to be explained to public union
11 members. These resignations can also be
12 required to be sent via certified mail to a
13 specific address that may or may not have been
14 changed without notice. And collective
15 bargaining agreements that last several years
16 can essentially trap members for the duration
17 of the agreement that no longer wish to be
18 associated with the union.

19 The supreme court in the Janus
20 decision in 2018 addressed this. And this is
21 a First Amendment right and a Constitutional
22 right.

23 My bill would change -- make a change
24 that would allow for the public-sector workers
25 to better express their freedom of speech and

1 right of free association without having to
2 comply with burdensome requirements that do
3 not specifically benefit that worker.

4 In allowing the public-sector union
5 members this freedom to resign when they wish
6 should not impact the unions at all because
7 people still have the right to remain members.

8 Thank you for allowing me to speak
9 today, Mr. Chairman.

10 MAJORITY CHAIRMAN COX: Thank you,
11 Representative Rothman.

12 Again, I'd like to have John Scarpato
13 to provide a technical overview of
14 Representative Klunk's House Bill 2042, in her
15 absence.

16 MR. SCARPATO: House Bill 2042 amends
17 the Public Employees Relations Act. It adds a
18 definition of "nonmember." It adds a new
19 section, 402, to provide for a -- it adds new
20 language to Section 402 to provide for a
21 notification of employee rights, notices of
22 rights will be provided to nonmembers within
23 thirty days of the effective date and annually
24 after that during the month of January. New
25 and returning employees will get a notice

1 prior to the point of hire.

2 The special language -- the specific
3 language of the two notices is directly
4 included in the bill. And the bill also
5 repeals Section 2215 of the Administrative
6 Code and Act 15 of 1993, which are no longer
7 enforceable under the First Amendment of the
8 U.S. Constitution.

9 MAJORITY CHAIRMAN COX: Thank you,
10 John.

11 At this time, we're going to have our
12 panel discussion. I've asked a number of
13 individuals -- those who are here in person,
14 please join us at the table up here as I make
15 the introductions.

16 We have joining us virtually, Josh
17 Cunningham, who is a project manager with the
18 National Conference on State Legislatures.
19 He's with the employment, labor, and
20 retirement division. Joining us here in
21 person we have Danielle Acker Susanj -- I
22 totally messed that up, I apologize -- who is
23 the vice-president and senior litigation
24 counsel at the Fairness Center. We also have
25 Cheri Gensel, who is a teacher at the North

1 Pocono School District. Also joining us,
2 we have David Osborne, the chief executive
3 officer with the Americans for Fair Treatment.
4 And also joining us virtually, we have Jeffrey
5 Sultanik, who is a partner with Fox
6 Rothschild. Mr. Sultanik represents public
7 employers in union labor-related issues.

8 And so, I'd like to thank all of you
9 for joining us today. As has been our custom
10 with this committee, I would ask that all of
11 you stand and raise your right hand and be
12 sworn in.

13 JOSH CUNNINGHAM,

14 DANIELLE ACKER SUSANJ,

15 CHERI GENSEL,

16 DAVID OSBORNE,

17 JEFFREY SULTANIK,

18 were duly sworn or affirmed.

19 MAJORITY CHAIRMAN COX: Thank you.

20 All right. We've invited NCSL to
21 open with an eight to ten-minute presentation
22 on the national landscape on these issues. We
23 felt like it would be a good overview, just to
24 give us a so-called lay of the land on what's
25 occurred out there, a little bit of a summary

1 on the Janus issue and the case and so forth.

2 So, at this time, we're going to
3 start with that. And each of the remaining
4 panelist are going to be given a five-minute
5 opening statement, and then we've allotted the
6 remainder of the time for the panel to receive
7 questions from the members on the committee.

8 We also have included written
9 testimony in the packets that are available.
10 A few of our panelists did not have a lot of
11 notice to prepare, so their testimony was a
12 bit late. We'll distribute it to the
13 committee members and others upon request.

14 At this point, I'd like to go ahead
15 and get started then with NCSL.

16 Mr. Cunningham, when you're ready, we
17 are waiting.

18 MR. CUNNINGHAM: Great. Thank you.

19 I'll try to share my screen real
20 quick so you can see. I believe the committee
21 all has a copy of my slides as well.

22 Sorry. Give me one moment.

23 Can you all see my slides now? Okay.

24 MAJORITY CHAIRMAN COX: Yes, we can.

25 MR. CUNNINGHAM: Okay.

1 Thank you, Mr. Chairman and members
2 of the committee.

3 My name is Josh Cunningham, and I am
4 a project director for the National Conference
5 of State Legislatures. I work in NCSL's
6 employment, labor, and retirement program.
7 NCSL serves as the bipartisan membership
8 organization for the nation's state
9 legislatures and legislative staff.

10 I come before you today at the
11 invitation of the chairman to discuss the
12 national landscape of state policy as it
13 relates to public employer organizing and
14 collective bargaining.

15 I want to preface my remarks by
16 noting that NCSL does not take a position in
17 state policy matters, including the bills
18 being discussed today. We only seek to inform
19 the committee on relevant actions in other
20 states.

21 I thought I'd start today with a
22 quick overview of union participation across
23 the country. So, over the last, roughly,
24 forty years, the union membership has declined
25 by about half when measured as a percentage of

1 the overall workforce. According to the
2 Bureau of Labor Statistics in 2020, 10.8
3 percent of the workforce belonged to an
4 organized union.

5 If we dig into that figure a little
6 bit more, you'll see that 6.3 percent of
7 private sector workers are union members,
8 while 34.8 percent of public-sector workers
9 belong to a union. I will note that these
10 numbers are for union membership, but the
11 number of workers represented by a union are
12 higher, as many collective bargaining
13 agreements cover nonmembers as well.

14 NCSL has been tracking legislation on
15 this issue since about 2011. And since then,
16 we've identified 356 enacted bills signed into
17 law in thirty-nine states and Washington
18 D.C., as well as Puerto Rico. And those
19 relate to the public employee in general.
20 These bills address a number of issues,
21 including collective bargaining rights, the
22 CBA parameters, union certification and
23 recertification, and labor organization
24 political activity.

25 I will note that this represents a

1 combination of state policies to enhance union
2 representation, limit union scope, or simply
3 just make tweaks to the state policy.

4 In searching for legislation relevant
5 to today's hearing, we identified three states
6 that have enacted measures similar to some of
7 the legislation under consideration here
8 today. I will discuss a bill from Tennessee
9 that addressed the maintenance of membership
10 clauses, Iowa's approached to certification/
11 recertification, and a bill in Kansas that
12 limited the use of dues funds for political
13 activities.

14 Tennessee's House Bill 1606, enacted
15 in 2011, prohibits any collective bargaining
16 agreement in the state from containing a
17 maintenance of membership clause that
18 restricts an employee's ability to leave the
19 union prior to the end of the bargaining
20 agreement. Tennessee's bill applied to all
21 private- and public-sector employee
22 organizations with no exceptions for
23 corrections officers or public-safety workers.

24 Iowa overhauled its public employee
25 union law in 2017, with the enactment of House

1 File 291. A key part of the legislation
2 related to certification and recertification
3 of an employee organization. The bill changed
4 the threshold of support for petition to
5 organize from 10 percent of a bargaining unit
6 to 30 percent. Additionally, the bill states
7 that to certify or recertify a bargaining
8 representative, a majority of the public
9 employees in the bargaining unit must vote
10 yes. This was a change from the previous
11 requirement that it must only be a majority of
12 those who vote. In other words, under the new
13 law, those in the bargaining unit who
14 abstained from the votes are essentially
15 counted as no votes.

16 In addition to union elections, the
17 bill also limits what issues can be included
18 in the negotiated agreement, including
19 prohibiting payroll deduction for political
20 action committees and other political
21 contributions and activities. This provision
22 does not apply to bargaining units that are
23 comprised of at least 30 percent public-safety
24 employees.

25 And the last state I want to

1 highlight is Kansas, which enacted legislation
2 in 2013 limiting public-employee unions from
3 using dues collected from member payroll
4 deductions to fund partisan political
5 activities. This includes endorsing political
6 candidates and advocating for or against any
7 political candidates.

8 The unions can create separate
9 political action committee accounts, PACs, but
10 they must be funded through voluntary
11 contributions and cannot be a condition of
12 membership.

13 Public employees are still permitted
14 to use dues payments to communicate with their
15 member -- with their own members about
16 political candidates or to solicit member
17 donations to a PAC. The Kansas law provides
18 no exceptions for correction officers or
19 public-safety workers.

20 I have provided the committee with
21 links to these three bills for your reference.
22 I actually think you have text of two of the
23 bills in your packet.

24 I don't want to take up too much of
25 your time, so I will just conclude by thanking

1 the chairman and the committee for inviting me
2 here today to talk to you. And I look forward
3 to answering any questions that you all might
4 have when we get to that portion of the
5 hearing.

6 MAJORITY CHAIRMAN COX: Thank you,
7 Mr. Cunningham.

8 At this time, we're going to ask
9 Ms. Susanj -- did I get it right that time --
10 who, again, is the vice-president and senior
11 litigation counsel with the Fairness Center.

12 When you're ready.

13 MS. ACKER SUSANJ: Good morning,
14 Chairman Cox and members of this honorable
15 committee. Thank you for the opportunity to
16 present testimony here today.

17 Is that better?

18 My name is Danielle Acker Susanj. As
19 the chairman said, I'm vice-president and
20 senior litigation counsel at the Fairness
21 Center. At my firm, we've represented scores
22 of public employees who have faced or are
23 still facing legal issues that could be
24 impacted or addressed by the bills under
25 consideration here today.

1 Over our firm's history, we've
2 represented public employees on a wide range
3 of issues affecting their constitutional and
4 legal rights. And many times over the years,
5 we've stepped in when employees come to us
6 with legal troubles that have come up when
7 union officials have denied them their right
8 to resign from the union or to stop paying for
9 political activity that they oppose.

10 I go into further detail in my
11 written testimony, but this morning I wanted
12 to touch on aspects of three of the bills that
13 relate closely to legal and constitutional
14 issues that my clients have faced.

15 As to HB 2036, which addresses
16 maintenance of membership in state law, as
17 members of the committee are no doubt aware,
18 in 2018, the supreme court, in Janus, held
19 that nonmembers could not be force to pay a
20 union as a condition of employment. Following
21 that decision, many employees resigned from
22 their unions, only to have union officials
23 ignore or outright deny their attempts to
24 leave the union.

25 We've represented many employees who

1 were told that they could not resign because
2 the contract that governs their employment
3 that was agreed to between their public
4 employer and their union had a maintenance of
5 membership provision, which Pennsylvania law
6 currently authorizes. And these provisions,
7 which our clients have argued are patently
8 unconstitutional, prevent employees from
9 resigning and choosing to end their union
10 membership unless they happen to do so during
11 a fifteen-day window that can roll around only
12 once every few years.

13 Many unions have included these
14 clauses in their contracts with the public
15 employer in the past. Our clients have sued
16 the Pennsylvania State Corrections Officer
17 Association, AFSCME Counsel 13, SEIU Local
18 668, UFCW, Local 1776, and multiple PSEA
19 affiliates over the inclusion of these clauses
20 in their contracts.

21 The unions I've named removed these
22 clauses from their CBAs after our clients'
23 lawsuits. And, in fact, two different federal
24 judges have ruled that maintenance of
25 membership schemes are likely unconstitutional

1 under the United States Constitution. But, in
2 Pennsylvania, this law remains on the books.
3 So, any union -- public-sector union covered
4 by PERA could add this provision to their
5 contract.

6 HB 2036 would remove this provision
7 of state law that many of my clients have
8 argued is unconstitutional as written
9 currently.

10 As to HB 2042, which involves
11 notifying employees of their rights, many of
12 my clients come to us because they have only
13 belatedly learned what their rights are under
14 the constitution, often after union officials
15 or their employer are already violating these
16 rights. So, notification of rights could be
17 relevant to these clients in two different
18 ways that I want to mention today.

19 First, even today, there are
20 Pennsylvania public employees, including some
21 of my clients, who work under contracts that
22 have facially unconstitutional provisions,
23 provisions that require that nonmembers pay
24 the union as a condition of employment, known
25 as fair share fees, ruled unconstitutional in

1 Janus.

2 I've represented a public school
3 teacher who's CBA says that employees must pay
4 these fees. That CBA was signed after the
5 Janus decision. And in the course of
6 representing this teacher, we located twenty
7 additional contracts, all signed after Janus,
8 between unions and school districts that
9 require public employees to pay fair share
10 fees. This means that the unions and the
11 public employer included this language in a
12 contract after Janus, knowing that it was
13 illegal.

14 Employees don't -- if the employees
15 don't know about their rights, like the right
16 not to pay a union if they're not a member,
17 how are they going to look at a CBA and know
18 which provisions happen to be unconstitutional
19 under supreme court case law. And if they
20 don't know, they can't make an informed
21 decision about whether or not to join the
22 union, because they may think they have to pay
23 either way.

24 A second point on HB 2042, dozen of
25 the clients I represent have been asked to

1 sign membership documents that union officials
2 later use to say means that they have to keep
3 paying the union even if they leave the union.

4 Unions and their lawyers knew that
5 Janus was coming. Some of my employees signed
6 these documents, and they're dated days before
7 or after the Janus decision in June of 2018.
8 But employees don't have labor lawyers on
9 retainer, so they don't track pending
10 litigation. They don't follow every supreme
11 court decision, so they didn't necessarily
12 know that Janus was coming or that it had been
13 decided.

14 HB 2042 might help address this
15 imbalance between employees and the unions or
16 their employers.

17 For example, UFCW, as I mentioned
18 earlier, removed its maintenance of membership
19 provision after my client's lawsuit. And
20 then, later, its president, Wendell Young,
21 told a legal reporter that they still had ways
22 of restricting employees' abilities to resign.
23 A membership document that I have just
24 mentioned like this might be the way that he
25 meant.

1 And I quoted in my written testimony,
2 but it's worth noting that it's 206 words and
3 two sentences that I, as someone who's worked
4 in this area of law for years, find extremely
5 confusing. Imagine how difficult it would be
6 if you were a public employee who doesn't work
7 in this area of law and has never seen
8 language like this document before. It would
9 make it very hard to make an informed decision
10 about what to do with your rights.

11 Finally, as to HB 2048, which would
12 eliminate PAC contributions from wages, I just
13 want to note that several of my clients have
14 come to us after they resigned their union
15 memberships and wanted the Commonwealth to
16 stop taking dues deductions and PAC
17 contributions from their wages, and yet the
18 PAC deductions continued from their paychecks,
19 even though my clients argued that this is
20 blatantly illegal because it was not consented
21 and involuntary.

22 HB 2048 would eliminate the
23 possibility that that constitutional violation
24 that my clients have alleged could occur.

25 As you can tell, the bills under

1 consideration today matter to our clients.
2 They're public employees who care about what
3 their rights are and care about enforcing
4 those rights under the constitution, their
5 rights under federal and state law.

6 Thank you. I'll be happy to address
7 any of the questions the committee might have.

8 MAJORITY CHAIRMAN COX: Thank you.

9 Next, we are going to hear from Cheri
10 Gensel, who is a teacher with the North Pocono
11 School District.

12 When you're ready.

13 MS. GENSEL: Chairman Cox and
14 distinguished members of the Labor and
15 Industry Committee, my name is Cheri Gensel,
16 and I'm a social studies teacher at North
17 Pocono School District. I love being a
18 teacher. I love my district. And I love my
19 community. So, nothing that I say here today
20 should reflect negatively on any one of those.

21 Teaching is my passion. It's my
22 life. And I call it a privilege that I do not
23 take lightly. I give my time, my energy, and
24 my emotions to make sure that my students
25 succeed.

1 However, my values and world views do
2 not always align with those of the
3 Pennsylvania State Education Association,
4 PSEA, or the National Education Association,
5 the NEA. But when you become a teacher, it is
6 expected that you become part of the union.

7 On my first day as a teacher, the
8 local president walked up to me, handed me my
9 membership packet, said, Sign the last page
10 and hand it back to me.

11 I told her I wasn't sure if I wanted
12 to be part of the union.

13 Her only response to me was, You are
14 still going to have to pay dues, you will have
15 no liability insurance, so you might as well
16 join us.

17 So, I signed the papers and handed
18 them back to her.

19 Over the years, I only grew more and
20 more disenchanted with the union, to how they
21 micromanage what I can do to help my fellow
22 teachers and to help my students, for
23 decisions that they make that do not always
24 help the students, but, most importantly, that
25 the union's opinion becomes my opinion. My

1 personal choices and my views were never
2 separated from the union's agenda.

3 The final straw for me came in 2014,
4 when I was sent a series of letters from PSEA
5 telling me that I needed to change my party
6 affiliation from Republican to Democrat to get
7 Tom Wolf elected as the Democratic candidate
8 in the primary election. And then I could
9 vote for whoever I wanted in the general
10 election. It also insinuated that my party
11 affiliation made me a bad teacher and
12 unprofitable to my students.

13 The union even then sent a letter to
14 my husband, telling him that I was voting for
15 Tom Wolf and he needed to do the same.

16 These letters hit me in two
17 fundamental ways. First, my mission as a
18 teacher is to always do what is best for my
19 students to succeed, which does not depend
20 upon my party affiliation but on my skills as
21 a teacher. And, second, as a social studies
22 teacher, I know that the union does not have
23 the right or give me the right to vote. That
24 is given to me by the U.S. Constitution. And
25 that vote is my business.

1 What made me even more upset was when
2 I went to my PSEA union leader -- local leader
3 -- sorry -- and I told her what had happened,
4 she assured me that there had to be a
5 miscommunication, and she would talk to PSEA
6 for me and she would get back to me. After
7 talking to PSEA, I never heard from her again.

8 I later read in the newspaper that
9 PSEA said, quote, they had a legal right to
10 spend union dues to tell me and my family to
11 follow PSEA's political agenda.

12 I chose to be a teacher when I was in
13 the fourth grade actually, not a political
14 puppet for a lobbying group that does not
15 represent my personal views.

16 I wanted to get out of the union
17 immediately, but, honestly, I didn't know how.
18 I had to start my own research. And I found
19 out that my contract had a maintenance of
20 membership clause that said I could only
21 resign during a fifteen-day window before the
22 next contract was signed. I was -- this was a
23 multi-year contract, and so I was finally able
24 to resign my membership in 2018, and that was
25 with help from the Janus decision.

1 This is why the legislation before
2 you today is so important. For teachers who
3 think like me and who do not know alternatives
4 exist, with this legislation, on their first
5 day, teachers will learn of their First
6 Amendment right to not join a union or pay
7 dues if that is what they choose, information
8 that is not currently disclosed to them. They
9 will also not be stuck in the union because of
10 a collective bargaining agreement that
11 contains limits on when a teacher can resign.

12 I strongly support policies that give
13 public employees the right to choose. You
14 cannot have a blanket organization take care
15 of the many problems and different
16 circumstances in each school district across
17 this state. The right to vote on which union
18 represents them in the workplace will allow
19 for progress. When given a choice, people
20 have an opportunity for change.

21 I believe that if our union had to
22 face the teachers on a regular basis and ask
23 them for their vote, the union would be more
24 accountable to teachers and less likely to do
25 the bidding of state and national union

1 officials. With greater accountability and
2 greater choice, greater progress can be made
3 for all.

4 Thank you.

5 MAJORITY CHAIRMAN COX: Thank you,
6 Ms. Gensel.

7 Next, we'll hear from David Osborne,
8 the CEO for Americans for Fair Treatment.

9 MR. OSBORNE: Hi. Good morning.
10 Thanks to Chairman Cox, the Democratic Chair
11 Mullery, in absentia, and the committee for
12 the invitation.

13 I'm David Osborne. I'm CEO of
14 Americans for Fair Treatment. It's a
15 nonprofit that educates public employees as to
16 their rights in the unionized workplace and
17 connects them with every available resource to
18 exercise those rights.

19 These bills represent common sense
20 solutions to some of the most practical
21 problems that are facing public-sector
22 employees who want to exercise their workplace
23 rights. I think we can all agree that
24 public-sector employees deserve to understand
25 their rights, and no one should be forced to

1 be in a union just to get a government job,
2 and that everyone should have a choice when it
3 comes to which union represents them.

4 Unfortunately, every major
5 public-sector union is investing in just the
6 opposite. Unions are finding new ways of
7 obscuring information from public employees,
8 manipulating them into becoming union members,
9 locking them into membership dues, using
10 complicated membership forms and legal jargon.

11 So, to show you what I'm talking
12 about, I asked the committee staff to accept
13 and then distribute membership cards from the
14 most notable public-sector unions in
15 Pennsylvania. Public employees are most often
16 asked to sign these in one of two contexts,
17 either when they're filling out paperwork for
18 their employer, making them appear necessary
19 for employment, or in an unsupervised
20 orientation session with the union, where
21 union officials can and have said whatever is
22 necessary to get people to sign.

23 So, using these memberships cards,
24 I'm going to show you four major problems that
25 are facing public-sector employees.

1 Unfortunately, these problem are created by
2 public-sector unions in an effort to keep
3 money and political power flowing.

4 So, first of all, major unions are
5 making -- every really major union is making
6 employees pay dues regardless of membership
7 status. That is, even if a public employee
8 wants to resign from their union and
9 successfully ends their union membership, they
10 are still being made to pay full dues to the
11 union.

12 So, let me direct you to Exhibit A.
13 This is AFSCME Council 13. AFSCME Council 13
14 represents 65,000 state and local public
15 employees in Pennsylvania. I want to direct
16 your attention to the second full paragraph.
17 It says: Effective immediately, I hereby
18 voluntarily authorized and direct my employer
19 to deduct from my pay each pay period,
20 regardless of whether I am or remain a member
21 of the union, the amount of dues certified by
22 the union, as they may be adjusted
23 periodically by the union.

24 This is wildly unconstitutional under
25 the supreme court's decision in Janus versus

1 AFSCME, but it has yet to be resolved in
2 litigation.

3 Second, public employees are being
4 led to believe that membership is a condition
5 of employment, something that's never
6 been legal. For example, according to
7 documents that are filed by -- filed -- that
8 are filed in a lawsuit that was brought by a
9 liquor store clerk, the United Food and
10 Commercial Workers, UFCW Local 1776, tells new
11 employees in orientation sessions that they
12 must join the union in order to keep their
13 job.

14 The union initially defended itself
15 in court by arguing that it properly apprised
16 public employees of their rights. But if you
17 look at the membership form -- it's labeled
18 Exhibit B -- you'll see how that language
19 appears to new employees. It's on the back.
20 See that? Light gray, difficult-to-read type,
21 on the back of a form that is signed in
22 triplicate. You'll see it says "printer type,
23 please press hard" so it gets through all of
24 the copies. None of those copies are provided
25 to the public employee on their way out of

1 that orientation session.

2 UFCW Local 1776 represents about
3 3,000 Pennsylvania Liquor Control Board
4 employees and 30,000 other private- and
5 public-sector employees in Pennsylvania.

6 Now I want to look at Exhibit C.
7 This is PSEA, the state's largest teachers'
8 union, which you'll see here, same contents.
9 They've got some language here about paying
10 dues regardless of membership status, but it's
11 a much smaller package. So, from where you're
12 sitting, I bet you can't read this. The font,
13 as best I can tell, is 5.5.

14 They've got language I showed you
15 before, but you'll also see that the
16 membership agreement, which is down towards
17 the end, is placed very closely to an
18 authorization that's meant for collecting
19 political action committee funds.

20 This sort of membership card, of
21 course, is very difficult for employees,
22 again, under the watchful eye of a union
23 representative on the first day of work, to
24 read or understand before they sign. So, it
25 leads many employees inadvertently to sign up

1 for funding political projects with which they
2 disagree.

3 Finally, I'll direct you to some very
4 concerning language from an SEIU 668
5 membership form. This is Exhibit D. SEIU
6 represents about 20,000 employees in
7 Pennsylvania at the state and local level.
8 They, like AFSCME, have a big contract with
9 the state that they negotiate with Governor
10 Wolf. It's got much of the language that
11 we've discussed before, but it's also got this
12 language in the fifth full paragraph, it says:
13 To facilitate payment of the dues or other
14 contribution from my bank account, I authorize
15 my employer to provide to SEIU Local 668 my
16 designated secure payment process, or the
17 information for the bank account, on file with
18 my employer.

19 They're getting bank account
20 information in order to keep dues flowing.

21 Now, this discussion may remind some
22 of you of some issues that you may have
23 handled in the consumer protection space, and
24 I see why. In both contexts, you've got a
25 multi-million dollar -- multi-billion dollar

1 organization seeking relatively small amounts
2 of money from people who don't have a lawyer
3 on hand and are put under extraordinary
4 financial or social pressure.

5 You know, I believe the problems that
6 are facing public employees are even greater
7 than those facing consumers, and that is
8 because we have given public-sector
9 employees -- sorry, public-sector unions
10 extraordinary power to act in a special
11 fiduciary capacity for public employees.
12 State and local governments also rely on
13 unions to act as an exclusive representative
14 for their employees, but only on the
15 assumption that unions are treating employees
16 fairly.

17 There is a real need for the general
18 assembly to get involved here, particularly
19 given that the courts have been slow to act
20 under Janus.

21 So, I'm looking forward to working
22 with you all to find solutions that will give
23 public employees the power to make informed
24 decisions regarding their union membership
25 affiliation.

1 Thank you.

2 MAJORITY CHAIRMAN COX: Thank you,
3 Mr. Osborne.

4 At this time, we're going to hear
5 from Mr. Sultanik, a partner with Fox
6 Rothschild. Again, he is an attorney
7 representing public employers in union labor
8 issues.

9 Mr. Sultanik, when you are ready.

10 MR. SULTANIK: Okay. I don't know if
11 my -- if I'm coming through. Can you hear me?

12 MAJORITY CHAIRMAN COX: Yes, we can.

13 MR. SULTANIK: Okay, very good.

14 Good morning. My name is Jeffrey
15 Sultanik. And I'm chair of the Education Law
16 Group of Fox Rothschild, LLP, which is the
17 largest firm in the Commonwealth of
18 Pennsylvania regularly representing school
19 districts.

20 For the past forty-three years, I've
21 been practicing education law in the
22 Commonwealth, and I have negotiated hundreds,
23 maybe even a thousand, of teachers and support
24 staff collective bargaining agreements.

25 I have been involved in nearly every

1 aspect of management in public-sector labor
2 interactions, including grievances, labor
3 arbitrations, meet-and-discuss sessions, labor
4 contract negotiations, new employee elections,
5 election disputes, impasse resolutions ranging
6 from mediation, fact finding, nonbinding
7 arbitration, and even binding arbitration.

8 And I may be taking a somewhat
9 different view today, and while I sincerely
10 appreciate the efforts on the part of the
11 sponsors to propose legislation that would
12 increase transparency for bargaining unit
13 members as well as the entire union leadership
14 to address issues in the workplace and issues
15 such as dues deductions and their ability to
16 belong to a union, my concern has always been
17 very simple, one going to the balance of power
18 that exists between management and labor in
19 the Commonwealth of Pennsylvania.

20 And while I probably understand the
21 view that some of these changes will actually
22 help improve the balance of power, I'm not
23 convinced of that right now. And in my
24 prepared materials, I've made some suggested
25 changes that really would help management in

1 the context of improving the balance of power
2 in the labor management relationships. And
3 I'm not going to go through that now in my
4 brief introduction, but I would like to at
5 least point out a couple of issues in the
6 proposed legislation.

7 First of all, with respect to House
8 Bill 2036, that house bill prohibits a
9 maintenance of membership provision, and for
10 valid reasons and for constitutional reasons.
11 And while I understand that this will weaken
12 labor unions, it is my understanding --
13 because I deal a great deal with the
14 Pennsylvania State Education Association -- in
15 practice, they do not honor these provisions
16 anymore for maintenance of membership. So, if
17 it gets raised, they will waive that
18 requirement in the relationship.

19 So, to the extent that you pass such
20 legislation, I understand it may help the
21 process, particularly for some other labor
22 unions that have been less willing to embrace
23 that concept. It will have virtually no
24 impact in my practice and assessing the
25 balance of power between the PSEA and school

1 districts of the Commonwealth of Pennsylvania.

2 With respect to House Bill No. 2037,
3 which would require periodic recertification
4 elections using a secret ballot vote amongst
5 public employees in the collective bargaining
6 unit to determine whether or not a majority of
7 employees desire to continue representation,
8 once again, I think it will be helpful, but it
9 does raise some elements of complexity.

10 When I bargain a contract with
11 anybody, I want to always be sure that the
12 person with whom I am talking can not only
13 represent the entity but carry a vote of the
14 majority of the bargaining unit members who
15 will vote on a collective bargaining agreement
16 that would be negotiated at the bargaining
17 table. I've always joked that I would always
18 rather negotiate with Jimmy Hoffa than with
19 somebody who has weak representation on the
20 part of the members that they have because, in
21 those situations, they want to satisfy too
22 many constituencies. And, indeed, what I have
23 seen post-Janus, at least in Pennsylvania, we
24 have seen no serious weakening in terms of the
25 union representation of members in the

1 Commonwealth.

2 So, periodic recertification
3 elections, maybe, but I have yet to be
4 convinced that that's going to have any change
5 in the balance of power at the bargaining
6 table.

7 House Bill 2042 is designed to
8 provide nonmembers of the bargaining unit
9 notification that there's no legal obligation
10 by nonmembers to make any payments to the
11 employee organization that serves on their
12 behalf. I understand where misrepresentation
13 of information may be occurring at the local
14 level. I think it may be hard to enforce
15 under the circumstances. And I think it will
16 be designed to make employees think twice
17 about securing legal representation. But I
18 don't predict that that is going to have any
19 substantive impact in the bargaining process.

20 And on House Bill 2048, on this
21 issue, I understand where a public employer
22 may not deduct issues from the wages of
23 employee money or funds to be used for
24 political contributions except as required by
25 the collective bargaining agreement. I

1 believe that that will have some help, because
2 it does, ultimately, limit the impact that
3 unions have in the selection and the
4 legislative process. So, on that particular
5 issue, I see some nexus of how that could
6 help, under the circumstances. But, to tell
7 you the truth, I'm not sure that that's going
8 to make a huge difference in day-to-day
9 bargaining.

10 In House Bill 844, the legislation
11 indicates that the provision of public
12 employee Social Security numbers, home
13 addresses, home telephone numbers are
14 problematic. There is a Pennsylvania Supreme
15 Court decision on that issue as it relates to
16 securing information under the Right to Know
17 Law, which limits the ability for individuals
18 to address that. I don't know of a huge
19 pressing need to deal with this issue. I
20 understand the constituents might feel more
21 comfortable under the circumstances, but it's
22 not an issue that is preoccupying management
23 in the field.

24 And, finally, with respect to House
25 Bill 845, this is the public employment

1 collective bargaining act, and this requires
2 an official notice of posting of a collective
3 bargaining agreement at least fourteen days
4 prior to acceptance and then other views. I
5 understand the desire for transparency.

6 I will tell you that very few
7 collective bargaining agreements are reached
8 nationally after public disclosure of the
9 agreement. It is the process of negotiating
10 back and forth, dealing with a labor union
11 that has the ability to negotiate effectively
12 on behalf of their membership, that results in
13 a collective bargaining agreement. And very
14 candidly -- and this may sound very elitist or
15 whatever -- most members of the general
16 public, even with this level of transparency,
17 will not understand the subtle nuances of
18 language in a collective bargaining agreement,
19 and the posting of fourteen days in advance
20 will only, in my opinion, delay the process
21 and create the possibility that there may be
22 community members and other individuals, who
23 are within the union and may not be happy with
24 certain aspects of a collective bargaining
25 agreement, to try to thwart its finalizing.

1 So, to make a long story short, I
2 have a whole lot of other issues that the
3 Labor and Industry Committee, in my opinion,
4 should be focusing in on that will make a
5 difference in the labor management process,
6 not the least of which is to mirror the
7 National Labor Relations Act to allow a school
8 district who's engaging in collective
9 bargaining agreement to implement its last,
10 best offer after reaching impasse in the
11 negotiations process. That would make a
12 meaningful difference.

13 These issues, in my opinion, are just
14 in the periphery of the labor management
15 process.

16 Thank you. And I will be glad to
17 address any questions on perhaps my different
18 viewpoint.

19 MAJORITY CHAIRMAN COX: Thank you,
20 Mr. Sultanik.

21 At this time, I'd like to ask any of
22 our members who are here to get the attention
23 of either me or John Scarpato here if you have
24 any questions.

25 I'm going to start with a question of

1 my own for Mr. Sultanik, if you are still
2 joining us.

3 MR. SULTANIK: I am.

4 MAJORITY CHAIRMAN COX: All right.

5 So, you mentioned that there -- if I heard
6 this correctly, you said there was not a
7 significant falloff of membership post-Janus.
8 Is that accurate?

9 MR. SULTANIK: What I have seen,
10 particularly with the teachers' union, that
11 their receipts are -- are at or even at higher
12 levels than existed prior to Janus itself.
13 And what they have initiated -- and they may
14 not have used great disclosure issues -- a lot
15 of them have even moved away from dues
16 deductions and they use, like, an auto debit
17 feature that you would have on the payment of
18 your home insurance policy, that you sign up
19 and they have this debit feature where they
20 get their dues automatically. So, they're
21 claiming to me that they're not seeing a
22 significant drop off in membership.

23 I have not statistically analyzed
24 that, but I have not perceived any weakening
25 of union representation in the collective

1 bargaining process post-Janus. I thought
2 there would be, but there really isn't, in
3 practice.

4 MAJORITY CHAIRMAN COX: Okay. Thank
5 you. I will probably return to that line of
6 questioning in a moment.

7 Representative Mackenzie has another
8 committee hearing he needs to get to, but he
9 has a question or two. I'll let him ask those
10 at this time.

11 REPRESENTATIVE MACKENZIE: Sure.

12 Well, thank you to all of our
13 testifiers for being here today.

14 I think you've shared some important
15 information for us and brought to light some
16 issues that I think are going to be very
17 highly considered as we move forward in this
18 process.

19 So, regarding the legislation that
20 I've introduced prohibiting PAC contributions,
21 anybody on the panel can provide information
22 about how many states actually still allow
23 this versus those that have prohibited it.
24 That would be my first question. Can anybody
25 provide that?

1 MR. OSBORNE: The National Conference
2 on State Legislatures may be the best to
3 answer that question specifically.

4 I will add, though, that there have
5 been court cases over this kind of thing,
6 where unions have claimed a right to the
7 payroll deduction mechanism, and the U.S.
8 Supreme Court has held that the unions do not
9 have that right, that it is not the obligation
10 of the state to -- to enable speech on behalf
11 of unions.

12 MR. CUNNINGHAM: Yeah. I don't
13 have -- thank you, Mr. Chair.

14 I don't have an exact number. You
15 know that there have been several states who
16 have introduced legislation around this. We
17 did reference, I think, both Iowa and Kansas,
18 I believe, that both addressed this issue in
19 legislation that was actually signed into law.

20 For the most part, I think a lot of
21 legislative activity we've seen has been more
22 just introduced but not actually being signed
23 into law. And, again, the case law around
24 this, I think, regardless of state action, any
25 sort of federal case law is going to supersede

1 any sort of state statute. So --

2 REPRESENTATIVE MACKENZIE: All right.
3 Thank you very much.

4 And just for any members on the panel
5 who have been either involved directly or
6 maybe with clients, have the -- is it
7 customary practice for the unions to either
8 push or imply or require that these political
9 contributions be made? Or how is that kind of
10 carried out?

11 MS. GENSEL: I can speak to what
12 happened in my district and how they carried
13 that out.

14 So, at every union meeting, you are
15 then reminded that you are to contribute more
16 to the PAC, and that will be above and beyond
17 what you've already been deducted from your --
18 from your -- from your paycheck.

19 And in my district, they came door to
20 door during classroom time, to knock on my
21 door. I had to sign a clipboard saying that I
22 was going to donate or not donate to the PAC.
23 They came twice. And after the second time, I
24 said, Please do not return to my classroom.
25 If I want to donate, I will donate at that

1 time.

2 And that finally stopped them, but I
3 had to get forceful with them.

4 MS. ACKER SUSANJ: I'll add, for my
5 clients that have had this issue, many of them
6 didn't understand that the PAC contribution
7 was voluntary at the time they signed the
8 form. I think Mr. Osborne's shown some forms
9 and why that might be the case. For instance,
10 a check box that says five dollars, two
11 dollars, or one dollar. There's no zero. So,
12 you kind of think you got to check something.

13 And -- and then for my clients who
14 chose to leave the union, they had trouble
15 with that, so have had local officials tell
16 them that they could not, in fact, end PAC
17 contributions, that they were part and parcel
18 with the dues deduction, or, you know, six,
19 eight months down the road being told that,
20 you know, it's inadvertent that they haven't
21 gotten around to ending those deductions yet.
22 So, it is a struggle, even when it is
23 involuntary and explicitly stated to be so,
24 before people can -- you know, you have to get
25 a lawyer involved to get it accomplished

1 sometimes. That's been my clients' experience
2 anyway.

3 MR. OSBORNE: Here's another
4 interesting scheme from a union called APSCUF.
5 They represent professors in the PASSHE state
6 system. What they do is they take a little
7 bit more out of everybody's paycheck in terms
8 of dues, and then at the end of the year, they
9 offer them a rebate. And the rebate says --
10 the rebate forms says, either you can -- we'll
11 give you the money back if you request it, or
12 we'll send it to the PAC if you want it to go
13 to the PAC. But the default, if you fail to
14 respond, is that they'll keep your money.

15 So, this has been a very effective
16 fund raising tool for their PAC. And year
17 after year they've been able to raise money
18 basically by taking it before the professors
19 can spend it.

20 REPRESENTATIVE MACKENZIE: Great.
21 Well, thank you again to all of you for being
22 here to testify.

23 It's very important that we learn
24 this information and, you know, I think not
25 only is it problematic that political

1 contributions are being done through the
2 public payroll system, the type of practices
3 you're talking about are very concerning
4 ethically as well, and I think we've seen that
5 from a national perspective. There has been a
6 discussion around recurring contributions to
7 political campaigns and candidates outside of
8 public-sector unions and whether or not people
9 are voluntarily making those or choosing to
10 make those, and then how they ultimately stop
11 them. Because, in some cases, candidates and
12 individuals are continuing to make those
13 withdrawals ongoing, after people want to stop
14 them, but because they have the bank
15 information, they continue to do it.

16 So, I think it's a big problem, and,
17 again, I want to thank all of you for being
18 here today, very important and appreciate your
19 time.

20 Thank you.

21 MAJORITY CHAIRMAN COX: Thank you,
22 Representative Mackenzie.

23 Representative Mizgorski.

24 REPRESENTATIVE MIZGORSKI: Thank you,
25 Mr. Chair.

1 And thank you, everyone, for
2 testifying today.

3 Danielle, how many clients do you
4 represent? And in addition to that, how many
5 do you think are having these issues and not
6 coming forward for help with them?

7 Thank you.

8 MS. ACKER SUSANJ: Sure. So, again,
9 we've represented clients on a wide range of
10 issues, so not just dealing with the things
11 that I've discussed today.

12 So, I mean, currently, close to a
13 hundred, perhaps, on various issues or --
14 certainly over a hundred over my years of
15 practicing at the firm, but not all on exactly
16 these issues.

17 But certainly there are, you know,
18 scores of clients that I have represented
19 specifically on these issues.

20 As to how many are out there, I mean,
21 hard to say. So, I've sued -- my clients have
22 sued Council 13. As Mr. Osborne said, they
23 can represent 65,000 workers in Pennsylvania.
24 SEIU Local 668 is another union my clients
25 have sued. They represent, I think, at least

1 close to 10,000, maybe more, workers in
2 Pennsylvania.

3 And so, certainly, one would think
4 that for every person who, you know, finds the
5 time to stand up for their rights and deal
6 with lawyers, which I realize is not
7 everyone's favorite thing to do, there are
8 probably many more who do not decide to do
9 that. So, I don't, obviously, have -- it's
10 hard to know the negative, obviously, of who
11 may be involved. But, of course, I would
12 imagine, for every client that I do have,
13 there are many, many more who, you know,
14 haven't found their way to help or don't have
15 the time to, you know, take a stand and pursue
16 this.

17 REPRESENTATIVE MIZGORSKI: Thank you.

18 And, Mr. Sultanik, if you could just
19 touch base, you mentioned you thought there
20 were some other legislative ideas that you
21 thought would be effective. If you could just
22 touch base on that and let us know what those
23 are.

24 Thank you.

25 MR. SULTANIK: Sure. The single most

1 important issue that -- if I could forget
2 about any and all other legislation that would
3 need to be passed, is the authority of a
4 school entity to implement the last, best,
5 final, best offer that it has on the
6 bargaining table, consistent with what is
7 permitted under the National Labor Relations
8 Act and dealing with status quo obligations.

9 Without getting religious, I will
10 tell you that the only area of the law where a
11 terminated contract still exists is in the
12 area of labor law. And right now, in
13 Pennsylvania, if you're bargaining with a
14 labor union, if you do not reach an agreement,
15 the employer's required to maintain the status
16 quo in perpetuity. And that would mean, if
17 the district has an inordinately expensive
18 health benefit program with a very high
19 actuarial value, that it must maintain that,
20 even though the district is experiencing
21 double-digit increases in the cost of the
22 health benefit program while you are
23 negotiating a successor contract.

24 In the private sector, if you're
25 covered under the National Labor Relations

1 Act, if you reach impasse at the bargaining
2 table, you could implement your last, best
3 offer. But based upon a 1992 Pennsylvania
4 Court decision in Philadelphia Housing
5 Authority versus the Pennsylvania Labor
6 Relations Board, public entities cannot likely
7 implement their last, best offer, even if they
8 bargain to impasse. That doesn't exist
9 anywhere in most of the country and certainly
10 under the National Labor Relations Act, which
11 governs our private-sector labor unions, other
12 than in the state of Pennsylvania.

13 With that one change, we could make a
14 remarkable change in the balance of power in
15 dealing with labor unions in the collective
16 bargaining process.

17 In addition, clarifying what really
18 means in status quo in terms of what can be
19 changed in the collective bargaining agreement
20 once a contract expires. The law is a complex
21 amalgam of Pennsylvania unemployment
22 compensation law and labor law that doesn't
23 always match up. And I've outlined that in
24 the materials that I've provided on the
25 complexity on those cases.

1 And though I don't sleep at night as
2 a regular basis, the things that really do
3 keep me up at night are status quo issues that
4 are there.

5 To me, those are the two most single
6 important issues that, if the Department -- I
7 mean, if this legislative committee wants to
8 address, that could make a meaningful
9 difference in the collective bargaining
10 process.

11 All of these other issues, they're
12 helpful. I will say they may be important for
13 establishing the rights of bargaining unit
14 members on transparency and dealing with their
15 labor unions, but I have yet to see any
16 substantive changes in the forty-three years
17 I've been doing this with a lot of changes in
18 legislation and the like. These would make
19 important changes in how we bargain with
20 unions.

21 REPRESENTATIVE MIZGORSKI: Thank you.

22 MAJORITY CHAIRMAN COX: Next,
23 Representative Rowe has some questions.

24 REPRESENTATIVE ROWE: Thank you very
25 much, Mr. Chairman.

1 I did have a question for the PSEA,
2 but as we see, they have opted not to attend
3 today. I do kind of see where they're coming
4 from, opposing transparency, taxpayer dollars,
5 is a fairly indefensible position, so it is
6 easier to just not show up, or, in the case of
7 our colleagues, opt for political theater over
8 meaningful dialogue.

9 So, instead, Cheri, I'll ask you.

10 First of all, thank you very much for
11 being here today. I want you to know that you
12 are not alone. Your words where you said you
13 chose to be a teacher, not a political puppet,
14 I cannot tell you how many times that has been
15 echoed to me by teachers in my own district,
16 let alone teachers outside of my district.
17 So, you are not alone. Thank you for standing
18 up for your convictions and your principles.

19 I wanted to ask you, after the Janus
20 ruling, did you hear anything from the union
21 or the administration regarding the
22 membership? Did you receive any sort of
23 notification of your rights to join or not
24 join? What was the communication on that
25 front?

1 MS. GENSEL: Representative Rowe,
2 thank you for that question because, after the
3 Janus decision, there was no talk of the Janus
4 decision within the union. The reason why
5 members are not leaving is because they don't
6 understand the Janus decision. They're not
7 told about it. They're not mentioning it.

8 And that maintenance of membership
9 clause is still being held to by the PSEA.
10 When I finally was able to leave under the
11 Janus decision, I had a three-hour exit
12 interview by my local union in which she
13 asked -- my very first question that she asked
14 me was, How do you intend on continuing to pay
15 for your dues? And I said, I don't, because
16 the Janus decision has relieved me of that.

17 And she then continued to tell me
18 that I had signed paperwork that was going to
19 hold me and bind me to that decision and that
20 I would have to give them the money. And --
21 and then I had to go through and prove to her
22 that my paperwork did not have that specific
23 clause on it.

24 And then after I did that, they still
25 used that tactic with three other members that

1 left after me, who contacted me and said, Are
2 they telling you that you have to pay dues
3 still? And then I told them how they had to
4 go about to get the union to kind of back off
5 on that.

6 So, the real problem is, is that
7 teachers -- or members of the union don't
8 understand things. I have teachers all the
9 time coming to me and saying, Why did you give
10 up your pension by leaving the union? I said,
11 I didn't give up my pension by leaving the
12 union.

13 Yes, you did. Because they don't
14 understand the difference between PAC, PSERS,
15 and PSEA.

16 And I also have teachers all the time
17 saying to me about why do you -- why did you
18 leave? You have no -- just -- there was
19 another question they always asked me about my
20 salary, about leaving, because now -- don't
21 you still have to do X, Y, and Z, you know,
22 for the union? And it is true that, like, if
23 I leave, I have really no voice. I am bound
24 by the law under the contract that PSEA
25 negotiates. I cannot say anything other than

1 what the contract says. And, yet, I am not
2 allowed to be a voice in that. I'm held.
3 I've really, honestly, at times just felt like
4 you are held as a hostage.

5 But today, they're not told about the
6 Janus decision. And many of them are afraid
7 to leave as well, because of threats, because
8 of the way that you're now perceived in the
9 school or perceived at your job for not being
10 a member of the union.

11 REPRESENTATIVE ROWE: Well, you may
12 feel like your voice is not heard there, but
13 your voice is definitely heard here. So,
14 thank you very much for being a voice for so
15 many just like you.

16 We're very grateful for your
17 testimony and for all of you for taking time
18 to be here today.

19 Thank you, Mr. Chairman.

20 MS. GENSEL: Thank you for having me
21 today.

22 MAJORITY CHAIRMAN COX: Thank you,
23 Representative Rowe.

24 Next, Representative Keefer.

25 REPRESENTATIVE KEEFER: Thank you,

1 Mr. Chairman.

2 So, I, too, want to echo my
3 colleague's sentiments about being
4 disappointed that, A, our colleagues aren't
5 joining in on this dialogue, and that, you
6 know, we invited PSEA and AFSCME to come and
7 discuss these issues with us as well. And I
8 assure you that if we just proceeded with this
9 legislation and take a vote, they would be
10 screaming. That would be the foundation of
11 why they would oppose these bills, is that we
12 didn't hold these public hearings and allow
13 everybody to go on record with their concern.

14 When you talk about fair
15 representation and being represented and being
16 able to cast a vote without intimidation,
17 these are issues that we hear about all the
18 time.

19 So, Mr. Cunningham, the
20 recertification of elections, there's nothing
21 in the law that requires regular
22 recertification elections for employee
23 representation in the collective bargaining
24 unit.

25 Is this a common practice among other

1 states, or is this something exclusive to
2 Pennsylvania?

3 MR. CUNNINGHAM: I don't know if I
4 can say it's common. I don't have a count of
5 states. But I will say, you know, having the
6 recertification -- I think I mentioned, like,
7 the Iowa legislation that held that
8 recertification at the end of every collective
9 bargaining agreement. I think that that is
10 probably less representative of what is
11 typically done around the country.

12 So, again, I don't have an exact
13 number, but I do think that the way that
14 Pennsylvania does it -- I don't know. I don't
15 want to, like, give a straight answer without
16 the numbers. But it's certainly something I
17 can look into. We can find -- we can put
18 together a list of, like, a fifty-state
19 resource for the committee, if you'd like,
20 around how states handle recertification. And
21 we'll be happy to send that to you guys.

22 REPRESENTATIVE KEEFER: Yeah, that
23 would be helpful. So, you don't have a
24 general idea of just, in general, you know, we
25 have, what, 40 percent of the states, you

1 know, run regular certification --
2 recertification elections, or once it's done,
3 you know, there are many states that just,
4 hey, you vote once on this and that's it.

5 MR. CUNNINGHAM: Yeah. I don't --
6 [overtalking] --

7 REPRESENTATIVE KEEFER: --
8 [overtalking] --

9 MR. CUNNINGHAM: Yes, I'm sorry.
10 Thank you.

11 The -- every state is, like, really
12 different. So, there's a lot of nuances
13 there, so I don't want to just make a blanket
14 statement. But, like I mentioned, I'm happy
15 to put together a resource for you that kind
16 of describes some of those nuances and share
17 that with the committee.

18 REPRESENTATIVE KEEFER: Yes. That --

19 MR. SULTANIK: If I may, this is
20 Jeffrey Sultanik. If I may be rude enough to
21 interrupt on this issue.

22 I have not done an extensive
23 analysis. First of all, most state
24 legislations are based upon the National Labor
25 Relations Acts in terms of the requirements

1 for certification elections, recertification
2 elections, and the like. No such provision is
3 mandated under the federal National Labor
4 Relations Act, and it would be fair to
5 surmise, if I had to make a very educated
6 guess, that only a small minority of states
7 require recertification elections under their
8 state bargaining laws, many of which aren't as
9 strong as Pennsylvania's state bargaining law
10 in question.

11 And under current Pennsylvania law,
12 you can get a recertification election is if
13 there is a good faith doubt on the majority
14 status of the union. As to how you get that
15 information, the employers can't get directly
16 involved in that process, but if there is, for
17 example, a petition of the employees that are
18 gathered together that amounts to a majority
19 of the composition of the bargaining unit,
20 that -- then a decertification election could
21 be presumptively scheduled by the Pennsylvania
22 Labor Relations Board. And that is very
23 difficult to occur. In my forty-three years
24 of doing this, I've only had perhaps four or
25 five decertification elections. So, it is

1 quite difficult to do under Pennsylvania law
2 under the circumstances.

3 But I would venture to guess that
4 only a small percentage of states allow for a
5 recertification election as proposed.

6 And I apologize for interrupting.

7 REPRESENTATIVE KEEFER: No, that's
8 okay. And that's the premise of my
9 legislation, is just because, in Pennsylvania,
10 it is such an enormous hurdle to overcome to
11 get that petition and get that requirement to
12 have those decertification or recertification
13 elections.

14 Mr. Chairman, if I may, one more
15 question.

16 Mr. Osborne, you gave us specific
17 language in some of these contracts, these
18 maintenance membership contract clauses. Do
19 you know of any lawsuits in Pennsylvania
20 challenging any of those?

21 MR. OSBORNE: Oh, sure. I know that
22 the Fairness Center -- Danielle is here from
23 the Fairness Center -- has filed a number of
24 those cases. Yeah, absolutely.

25 REPRESENTATIVE KEEFER: And,

1 specifically, on the language that was in the
2 AFSCME and the PSEA contract?

3 MR. OSBORNE: That's right. Yeah. I
4 don't know how many times they've sued over
5 it, but it's not once, it's not twice, it's
6 not three times. A lot of times.

7 MS. ACKER SUSANJ: Yeah. So, we've
8 sued -- our clients have filed lawsuits
9 against PSCOA. I've had -- I've represented
10 over thirty AFSCME Council 13 members over
11 resignations and dues deduction issues.

12 We've had more than five lawsuits
13 against SEIU Local 668, a couple against UFCW,
14 a couple against PSCOA. So, yeah, it's
15 certainly more than one or two. And they
16 are --

17 REPRESENTATIVE KEEFER: Any
18 successful cases?

19 MS. ACKER SUSANJ: So, yeah. As I
20 mentioned, the following lawsuits against
21 PSCOA, Council 13, 668, UFCW, and a few of the
22 PSEA affiliates, the provisions in the
23 collective bargaining agreement itself, which
24 is what the state law authorizes, were pulled
25 out. And so, that's -- that resolved those

1 lawsuits because they abandoned the
2 provisions. But that is why it still matters
3 that it's still in the law, because,
4 obviously, those could be added back in in the
5 future, and that would require, you know, an
6 additional lawsuit.

7 But the -- for the contracts that
8 existed when those suits were file, the
9 language was pulled out or it was pulled out
10 of the following collective bargaining
11 agreement. But, obviously, that leaves some
12 of the language that Mr. Osborne provided as
13 well that's sort of the individual --
14 individual piece of it still standing at
15 times.

16 REPRESENTATIVE KEEFER: So, my point
17 being that, you know, despite the Janus
18 decision and despite the laws changing, it
19 seems that nothing applies when we -- and
20 we're talking about often groups of
21 individuals who do not have limitless
22 resources at their disposal are forced to take
23 this course of action to require an agency to
24 follow the law.

25 Thank you both.

1 MAJORITY CHAIRMAN COX: All right.

2 Representative Torren Ecker.

3 REPRESENTATIVE ECKER: Thank you,

4 Mr. Chairman.

5 Thank you, folks, for being here and
6 having a dialogue here with us today. I think
7 it helps to, you know, hear both sides of the
8 issue. Unfortunately, it sounds like I
9 missed -- I missed stuff earlier, but, in any
10 event, I have just a few questions, if I may.

11 So, we've talked a lot about Janus in
12 the time I've been here, and that decision
13 came down right as soon as I took office, and
14 Representative Klunk introduced that bill,
15 which seemed like a common sense kind of
16 approach, didn't -- ultimately, when we had --
17 that bill came up, we got challenged for not
18 having these hearings, and I guess that's
19 frustrating a little bit.

20 But this is a question for

21 Mr. Sultanik.

22 After the decision came down for
23 Janus, how did -- how did your clients change
24 their policies or -- as public employers?

25 MR. SULTANIK: Well, first of all, a

1 majority of -- let me back up. When Janus was
2 originally ruled upon, we had significant
3 discussions with the federation and the
4 Pennsylvania State Education Association, as
5 well as a number of teamsters and AFSCME
6 locals that primarily represent school
7 entities about how they were handling dues
8 deductions in particular school districts.
9 And they were often individual, case-by-case
10 determinations, because each collective
11 bargaining agreement had different language in
12 terms of how dues deductions and fair share
13 fees were handled.

14 In some districts, there were
15 explicit requirements of disclosure and the
16 use of dues deduction forms in question, and
17 in other collective bargaining agreements
18 there weren't. So, we had a lot of discussion
19 once Janus came down about whether they needed
20 to get new dues deduction forms from
21 bargaining unit members that may have had
22 confusing language and the like. And what we
23 found out is that a lot of the information was
24 sloppily maintained, candidly, by both the
25 unions and the public employers in terms of

1 what they had of record in terms of managing
2 it.

3 We were able to work through most of
4 those issues in the unions, and we didn't end
5 up having much in terms of dispute. The
6 unions then tried to force the districts to
7 submit information on spreadsheets and the
8 like so that they could try to collect back
9 dues and the like. And we, as most public
10 employers, weren't that cooperative in
11 providing that information to the local unions
12 under the circumstances.

13 So, to make a long story short, it
14 was a mixed bag in terms of that, and we ended
15 up changing some language in collective
16 bargaining agreements. And in the vast
17 majority of the contract negotiations, we were
18 able to eliminate the fair share fee language.

19 Now, where that got complicated is
20 that, in many situations, the local public
21 employers did their own collective bargaining,
22 and many of which extended through the
23 pandemic and the like, and there was not,
24 perhaps, a lot of attention given by the
25 public employers to eliminating fair share fee

1 language, which is clearly unconstitutional
2 under Janus.

3 So, then, when I'm often called in to
4 review the collective bargaining agreement,
5 which is after they've reached tentative
6 agreements, I mentioned, I said, You still
7 have a fair share fee provision in there.

8 So, the unions often objected to
9 getting it eliminated. And there is this -- I
10 have to say almost incredulous belief by some
11 labor unions that they want to leave the fair
12 share fee language in the collective
13 bargaining agreement in the event that
14 sometime down the road it ever resurrects
15 itself under the circumstances so that they
16 can initiate fair share fees down the road.

17 And I said -- I plan to do this for a
18 another forty-three years, but I don't expect,
19 during the next forty-three years, that
20 they're going to have any substantive changes
21 on the constitutionality of fair share fees
22 unless they know something differently.

23 In a couple of places you'll see
24 language with the fair share fee provision,
25 but then we would add a sentence that:

1 Pursuant to the Janus decision, this provision
2 is no longer enforceable and is
3 unconstitutional. And we put it on --
4 [inaudible] -- in the contract.

5 So, there are still, just like the
6 research showed, contracts that have fair
7 share fees. Some may be just purely out of
8 the ignorance of the public employer, some may
9 be out of the ignorance of a public employer
10 trying to consensual work with the labor union
11 and get other concessions. But I am not aware
12 of any one of my clients that are still
13 collecting fair share fees moving forward
14 post-Janus.

15 REPRESENTATIVE ECKER: Thank you for
16 that answer.

17 And real quickly, Mr. Chair, if I
18 may. And I don't know if this was addressed
19 earlier, but I don't know the answer to this,
20 so maybe the panel does.

21 Are there any other states -- or how
22 many other states have implemented something
23 like Representative Klunk's bill? Do we know?
24 With just requiring the notification.

25 MR. CUNNINGHAM: I can hop in real

1 quick. Thank you for the question.

2 Again, we haven't seen a lot of -- a
3 lot of legislative enactments around this. We
4 have seen -- on the whole slate of bills here,
5 we've seen other states considering this
6 legislation. We highlighted three that
7 touched on just -- since you weren't able to
8 hear this before -- we did touch on Tennessee,
9 which dealt with membership of maintenance;
10 Iowa, which dealt with recertification as well
11 the political contributions; and Kansas, which
12 also enacted a bill related to political
13 contributions.

14 But other than that, we haven't seen
15 a lot of enactments. We have seen some
16 proposed legislation, but I don't have a
17 number of states for it at hand is how many
18 states have this sort of thing in existing
19 statute. And, again, we're happy to put some
20 of that information together for you. We just
21 weren't able to get it together before the
22 hearing today.

23 REPRESENTATIVE ECKER: Sure, that
24 would be great. I appreciate that, and I
25 think the committee would, too. I think it

1 just kind of explains -- you know, it would be
2 helpful to see what other states are doing.

3 Thank you.

4 Thank you, Mr. Chairman.

5 MAJORITY CHAIRMAN COX: Thank you,
6 Representative Ecker.

7 Representative Rowe, you had an
8 additional question?

9 REPRESENTATIVE ROWE: Yes. Thank
10 you, Mr. Chairman. I appreciate the second
11 question.

12 So, I'll ask this to the panel at
13 large, maybe, Cheri, you can speak from
14 personal experience in your instance. But are
15 public employees made aware that their
16 personal information could be subject to
17 collective bargaining when they're joining?
18 Were you given any notice of that? Or is that
19 something that was just kind of, you know, as
20 Mr. Osborne was saying, it's kind of buried in
21 the fine print on that back page in very light
22 gray?

23 MS. GENSEL: Everything is buried,
24 and you don't know what -- what you are
25 required or what is not required under any of

1 the circumstances. You're not given the full
2 detail of your rights ever to not be a part of
3 the union. So, whatever the union says to do,
4 they literally will just hand you papers, say,
5 Sign here, sign here, sign here. Most of my
6 colleagues don't -- like I said before, don't
7 know the difference, that they are actually
8 giving to PAC or not giving to PAC or any of
9 those types of things. But nothing is
10 disclosed to you.

11 And that's the problem with all of
12 this, is that the members don't know. They
13 don't know how to leave if they want to. I
14 hear my colleagues all the time telling me
15 that they are upset about this or upset about
16 that, but there is nothing that they could do.
17 But they don't know how to leave. They don't
18 know how anything functions without a union.

19 The other questions that I get are,
20 like, Well, how would I get a job if there
21 wasn't a union? How would I get paid if there
22 wasn't a union?

23 And the other thing is that,
24 because -- right now, presently, just talking
25 to what they were just talking about, my

1 contract presently has a maintenance of
2 membership clause still in it. And it has the
3 language that says, if Janus is ever reversed,
4 it will immediately collect fair share
5 payments. And that is written right into our
6 2020-2024 contract.

7 So, members don't -- they just go by
8 whatever the union tells them to do. And a
9 lot of times they are fear tactics that are
10 being used with them. So, they're fearful to
11 leave, and there's no other alternative for
12 them to go to. There's no way to get -- if
13 they leave, they still have the union
14 representing them. That's why it's so
15 important for them to be able to recertify
16 their unions every so many years. Because, if
17 you leave, there's no other alternative. That
18 union is still representing you in everything
19 that they do.

20 And they'll tell you, though, things
21 like -- when the Janus decision first came out
22 and they were fearful about it, they were
23 telling the members that if the Janus decision
24 goes through, you are going to lose
25 everything, and your pay will go down to

1 18,500 dollars, because that's what the PA
2 school code says is the minimum wage. So,
3 every district -- every teacher was threatened
4 with the fact that they were going to lose
5 their money, their pay was going to go down,
6 Janus was a terrible, terrible decision.

7 But as soon as Janus was passed, no
8 discussion of it whatsoever. No way to get
9 out, no way to tell them that they had the
10 right to get out.

11 And so, it's really -- like, on the
12 basic local level and members, if they're
13 disgruntled about something, there's nowhere
14 to go. They don't know what to do. They
15 don't know how to get out, unless you take it
16 into your own hands. And they're -- and
17 everything is confusing to them.

18 MR. OSBORNE: For the transmission of
19 this personal information, there might be
20 one -- one of -- I'll count three different
21 ways that that can happen.

22 One of them will be in the contract
23 itself, the collective bargaining agreement.
24 Many members have come to us who've actually
25 read the tentative agreement that's been put

1 in front of them. But most of the time in a
2 ratification meeting, employees are provided
3 with something like this, three or four
4 sheets, summarizing the agreement that they're
5 being asked to ratify. And if they vote
6 against ratification, by the way, the union
7 still doesn't have to accept that. The union
8 can still accept the agreement.

9 So, many times, in that package of
10 material that they are provided, it doesn't
11 talk about the union turning -- or the union
12 getting Social Security numbers and home
13 addresses, personal email addresses, and cell
14 phone numbers from the public employer. But
15 it's in a lot of these things.

16 Another way is rolling public
17 information requests or Right to Know
18 requests, a lot of unions are in the habit of
19 continually asking for new data from the
20 public employer, and the employer will turn it
21 over. That -- that Pennsylvania Supreme Court
22 decision that Attorney Sultanic mentioned
23 previously gives a certain right of privacy to
24 individuals' home addresses, but it's actually
25 -- there's a -- there's a balancing test

1 that's required. And that's what the
2 Pennsylvania Supreme Court said, that one has
3 to consider the need for the information
4 against the individual's right to security and
5 privacy of their information. And that
6 balancing act tips in favor of the unions
7 every time, because they're the exclusive
8 representative. So, they're often the ones
9 getting all this information by public record,
10 even though someone who wanted that
11 information for some other reason couldn't get
12 it. So, that's the second way.

13 And the third way is, a lot of these
14 unions and public employers, very, very cozy.
15 So, they can walk down to the administration
16 and simply ask for -- for all of this data and
17 often they're just given it.

18 REPRESENTATIVE ROWE: So, then, to
19 follow up on that, you know, my House Bill 844
20 protects some of their personal information,
21 like home addresses, home telephone numbers,
22 personal cell phone, personal e-mails, and
23 even Social Security numbers. Do they need
24 all of that? What do they need to do their
25 job? What is the minimum? Because if an

1 employee wants to voluntarily say, Sure,
2 here's all of my personal information, you can
3 have it, then that's their choice, and they
4 certainly have the right to do that. But what
5 do they need? Do they need all this
6 information? What's the bear minimum they
7 could get by with to do the job they need to
8 do?

9 MR. OSBORNE: So, what are they
10 trying to do? They're trying to recruit
11 people, and then they're trying to collect.
12 So, they -- if they get as much personal
13 information as possible, they can repeatedly
14 bug people. I mean, they had to go to Cheri's
15 classroom, but they can also go to your email,
16 to your cell phone number, and repeatedly try
17 to get you to join the union or sign up for
18 PAC deductions.

19 But on the collection side, look, the
20 PSEA is now going after people in collections
21 for the dues that they feel they're owed.
22 This is not unique to Pennsylvania.
23 Historically, unions have gone after people in
24 small claims court to get their union dues
25 paid. And so, just like any other creditor or

1 landlord, they want as much personal data on
2 you as possible so they can find you and
3 collect.

4 MR. SULTANIK: If I may, I want to
5 supplement and maybe have a slight twist on
6 the concern about privacy of bargaining unit
7 member information. I am of the view that,
8 even though we could have strongly worded
9 legislation, nothing is going to prevent the
10 kind of pressure that goes on in the lunchroom
11 of a particular school district, the
12 discussions being shunned by other bargaining
13 unit members in terms of discussions and the
14 like. Legislation will not be able to deal
15 with that kind of pressure.

16 I'm of the view that outside
17 entities, such as the Fairness groups and the
18 like, should have the right to prepare
19 YouTubes and communications to bargaining unit
20 members to give them a resource that they can
21 address if the local union is not providing
22 them avenues on how to deal with issues
23 presented.

24 So, I am concerned that if we
25 restrict the flow of information for the

1 union's limited purpose of collecting dues and
2 recruiting individuals, that it is also
3 preventing outside entities to communicate
4 directly with bargaining unit members to
5 inform them of their rights.

6 So, I think we need to be careful in
7 any form of legislation restricting that
8 information flow, because I think the free
9 flow of information to individuals will make
10 them more educated to make informed, what I
11 call, consumer choices.

12 REPRESENTATIVE ROWE: Thank you very
13 much. I appreciate it, again, all the
14 perspectives here. We appreciate it.

15 Thank you for your latitude,
16 Mr. Chairman.

17 MAJORITY CHAIRMAN COX: Seeing no
18 other members with questions, I have a couple
19 myself.

20 The bill, House Bill 2036 and 2037,
21 repeal the maintenance of membership, union
22 recertification. Those, to me, seem to go to
23 the heart of what America stands for, which is
24 freedom of choice of what to belong to,
25 freedom of association. Those two, to me --

1 and not that I'm saying the other bills don't
2 have their place, but those two, in
3 particular, seem to be very common sense
4 approach to, hey, you want to keep the union
5 in existence, have another vote. It's kind of
6 like reelecting an elected official or
7 reelecting, you know, local school board
8 official, whoever it is, there's an
9 opportunity to reelect them. If they're doing
10 a good job, they stay; if they don't do a good
11 job, they might get replaced by someone else.

12 What is -- what do you think the
13 biggest holdup is for -- what the unions stand
14 to lose here from your perspective?

15 You've -- Danielle, you've
16 represented a number of clients. What do you
17 see is the biggest loss for the unions if
18 something like this comes about where there is
19 a -- not just a rolling ability to join a
20 union, but also a rolling ability to withdraw
21 your membership from a union on a monthly
22 basis or something like that? I mean, what --
23 what do the unions stand to lose from your
24 perspective?

25 MS. ACKER SUSANJ: Well, I mean,

1 looking at this from what my clients tell me
2 when they come just about these issues, I
3 mean, my clients are concerned with basically
4 being able to chart their own path. So, as
5 Cheri's explained today, the ability to take a
6 stand when they don't agree with something
7 that the union has done or said or political
8 activity. And so, the ability to -- to
9 disassociate, which, as you say, is a
10 fundamental right under the constitution for
11 these employees.

12 And so, when we have represented our
13 clients who were challenging maintenance of
14 membership, it's been on First Amendment
15 grounds, freedom of speech and freedom of
16 association, the ability to choose for
17 yourself who's going to speak for you and what
18 they're going to stand for.

19 And there is no getting around that
20 the union continues to represent these people
21 as employees, that the contracts the union
22 negotiates governs their terms and conditions
23 of employment whether they're members or not.
24 And so, keeping people in as members allows
25 you to build your numbers to perhaps have

1 strength and for union officials to say how
2 many people they speak for, but I think that
3 only underscores why it's so important to my
4 clients to be able to disassociate, which is
5 to say that actually the union doesn't speak
6 for me. They negotiate for me because that's
7 how Pennsylvania law is set up. They don't
8 represent my views, and I want to be able to
9 be free to make that clear.

10 So, that is the principle that drives
11 a lot of our clients to come to us, which is
12 to be able to say that the union doesn't speak
13 for me on these issues, and maybe they can
14 speak for me at the negotiating table, but I
15 want to be clear that they don't speak for me
16 as a member.

17 And as you say, that goes to
18 fundamental First Amendment principles that my
19 clients are interested in standing up for.

20 MAJORITY CHAIRMAN COX: Mr. Osborne,
21 would you comment on that as well?

22 MR. OSBORNE: Yeah. It's difficult
23 to be held accountable. And, really, what
24 these maintenance of membership -- sorry --
25 what these recertification reforms would do is

1 introduce accountability for unions that right
2 now they did not have.

3 So, most unions were voted in back in
4 the '70s, which means that virtually
5 every public employee working today did not
6 have the chance to vote on whether the union
7 that's in place now would represent them.

8 They also, as Attorney Sultanik has
9 pointed out, have very little practical
10 benefit from the existing law on
11 decertification. It's incredibly difficult to
12 get rid of your union even when it's horrible.
13 That's because there are full-time union
14 organizers who get to work twenty-four hours a
15 day, and get paid to do it, to prevent
16 decertification. Whereas, some -- an employee
17 who is trying to spearhead this effort -- and
18 we've worked with many of them -- they have to
19 work outside of working hours and off work
20 property in order to do that. That means,
21 like, you know, meeting on Saturdays with
22 groups of people that are doing their best to
23 represent themselves.

24 Now, every once in a while, there is
25 a successful decertification effort, but it is

1 so exceedingly rare that I think that we need
2 to look at a different way of bringing
3 accountability to some of the union officials.

4 MAJORITY CHAIRMAN COX: And of these
5 bills that are listed, we've got just these
6 six -- there are a number of other proposals
7 out there, the gentleman from NCSL has talked
8 about, you know, the range of issues. But
9 these six issues here that are covered by this
10 type of legislation, do you see the need to
11 pass them -- is there a need to pass them as a
12 unit? Or is there benefit in passing them as
13 a package of bills to address the different
14 types of concerns that are raised by those
15 that you represent?

16 MR. OSBORNE: Yeah, there is such a
17 package, I believe. It's HB 1117. I believe
18 Representative Rowe introduced that bill.
19 We're not here to discuss that today.

20 I do think it's helpful to have a
21 package, because, really, ultimately, it's
22 about accountability and about returning
23 choice to public-sector employees. And these
24 suite -- each one of them standing alone, it's
25 a great way to start that, but I think we've

1 got a long way to go.

2 MR. SULTANIK: If I may -- if I may,
3 on the recertification election issue, what I
4 am concerned about -- and I have a suggestion
5 for perhaps some modifications -- what I am
6 concerned about is if I am bargaining a
7 successor contract with a union that will be
8 subject to a recertification election, and we
9 are bargaining, let's say, the introduction of
10 a high-deductible health care plan, which most
11 of the bargaining unit members will not like
12 to see implemented in the particular contract,
13 regardless of whether it is a professional or
14 nonprofessional contract, the union will
15 naturally say, Well, we're subject to
16 recertification election this year, so there's
17 no way we're going to agree to a provision
18 that is going to make us look unpopular to the
19 majority of our bargaining unit members.

20 And I think it's going to make it, as
21 a practical matter, much more difficult to
22 negotiate provisions that are going to be
23 controversial within the bargaining unit
24 because the union leadership will be fearful
25 of entering into that. And I think it's going

1 to have a very negative desired impact, even
2 though it creates greater accountability on
3 the part of the union.

4 What I would suggest, though, is to
5 make the process of decertification easier
6 versus an automatic recertification election.
7 So, to establish, for example, a good faith
8 doubt as to the majority status of the union,
9 that can be done by a group of employees who
10 submit a petition, or, let's say, less than a
11 majority of the bargaining unit, and we can
12 determine what percentage that would be, is
13 dissatisfied with the delivery of union
14 services.

15 I think if you have an automatic
16 recertification election, it's going to have a
17 negative boomerang effect at the bargaining
18 table that would not be anticipated from a
19 just -- a simplistic look at whether this will
20 foster greater, you know, transparency on the
21 part of the union.

22 MR. CUNNINGHAM: Can I -- can I hop
23 in here real quick. And, again, apologize for
24 interrupting.

25 I will just point to Iowa. So,

1 Iowa -- in response to Mr. Sultanik's
2 comments, I believe the Pennsylvania bill has
3 a six year -- every six years the
4 recertification election has to be held. In
5 Iowa, they chose to -- rather than put a
6 number on it, they chose to tie it to -- it
7 has to be held right before -- and I don't --
8 I don't have the bill in front of me, so I
9 don't know the specific amount of time -- but
10 a certain amount of time before the agreement,
11 the current agreement, expires, which, I
12 believe, would then perhaps address
13 Mr. Sultanik's comment as the recertification
14 would occur before the new agreement takes
15 place.

16 That being said, there have been
17 recertification elections held in Iowa, and I
18 believe, for the most part, those have -- the
19 unions have been recertified. I don't have
20 any number of decertifications. I believe
21 there have been a couple, and I'm happy to
22 find that number for the committee. Just to
23 throw that out there that we do see this in
24 practice in Iowa, and, for the most part, the
25 vast majority of recertification elections

1 have recertified the union.

2 MS. GENSEL: Chairman Cox, may I say
3 something?

4 MAJORITY CHAIRMAN COX: Absolutely.

5 MS. GENSEL: Mr. Sultanik, he has
6 referenced twice now that laws cannot take
7 care of the batter that happens to members in
8 the lunch room or the pressure that members
9 receive to not go against the union. But if
10 you were to allow the law of the vote for the
11 recertification, it gives a legitimacy to the
12 members to be able to speak without fear of
13 those threats. Because, right now, if I
14 needed to get my union to be decertified, I
15 have to do it secretively, trying to going
16 around, trying to get petitions, trying to let
17 members know that we want to have a change,
18 even though a majority of the members would
19 want that change.

20 And that makes it so much harder for
21 us to have that democratic voice that you
22 spoke about earlier, that it just makes common
23 sense that I should have the right to choose
24 if I want this collective organization to
25 represent me or not.

1 And if you don't allow it, to legally
2 have that vote that all members would
3 understand then, like, in two years, we get to
4 vote this organization out if we don't like
5 them, and we then would be able to have a
6 voice to speak publicly about that.

7 If it's not a law, then we have to
8 stay quiet. People become fearful. People do
9 not want to speak out. And we have tried to
10 change our -- even our local membership, and
11 there has been so much pressure even under the
12 local membership that threats have been made.

13 The poor lady that wanted to run for
14 the presidency, they drew into the batter her
15 special-needs child and used that against her
16 so that she could not be the leader to be
17 elected. Any time you spoke out, the first
18 thing that people would say would be like,
19 Well, will the union find out about this?
20 Because they might show up to my door to talk
21 to me about this.

22 So, you have to legitimize a way for
23 the members to be able to speak out and not be
24 fearful.

25 And if you don't think that they do

1 this type of thing, they do. In 2013, when my
2 union voted to go on strike, the union chose
3 to use students as pawns and asked the
4 extracurricular advisors to stop running the
5 extracurriculars, stop running the sports,
6 stop doing that, and there were several of us
7 that refused to do that because we wanted to
8 be there for our students. And in the faculty
9 room was put up the Board of Shame that said,
10 You did not stand with the union, you are
11 dividing us. And there our names were listed.

12 So, this does happen, and he --
13 Mr. Sultanik even testified that laws cannot
14 take care of it. This is one law that can
15 take care of that. You can give the members a
16 legitimate voice to hold them accountable
17 without being persecuted personally.

18 MAJORITY CHAIRMAN COX: Okay. Thank
19 you for that.

20 Are there -- is there a process -- or
21 are there even alternatives? For instance,
22 whether it's the PSEA, whether it's the UFCW
23 -- didn't want to mess up the order of the
24 acronym there -- regardless of which union it
25 might be, are there alternatives to that that

1 are even available out there? Is there a
2 teachers' union that is not the PSEA that does
3 collective bargaining in Pennsylvania, for
4 instance?

5 MR. SULTANIK: I'm glad you brought
6 that question up, because even if you're
7 successful in a union losing a recertification
8 election, the likelihood is and my experience
9 has been, most bargaining unit members want to
10 get a representative, and the question is, are
11 they going to end up getting a representative
12 that is going to be much more transparent or
13 forthcoming than their previous
14 representative.

15 In Pennsylvania, in terms of teacher
16 representatives, there really are only two,
17 arguably three, options. It's either the
18 Pennsylvania State Education Association, an
19 NEA affiliate, or the Pennsylvania Federation
20 of Teachers, which is an AFT affiliate, and
21 there may be a few teamsters unions that may
22 be out there trying to garner professional
23 employees. I think you just substitute one
24 issue for another.

25 And I will also tell you, when you go

1 in and transfer from one union to another
2 during the midst of collective bargaining --
3 and I've had that situation, where, for
4 example, in 1993, the Pottsgrove Federation of
5 Teachers switched over to an education
6 association affiliate -- it causes many issues
7 in the collective bargaining process, new
8 union leadership. But I'll tell you, after
9 all is said and done, I'm not so sure that it
10 changes in any respect the level of
11 accountability.

12 So, I appreciate the viewpoint of a
13 teacher believing that going to a
14 recertification election will give you a
15 voice, it will, but I'm not so sure what it
16 gives you in the end.

17 MR. OSBORNE: If I may,
18 Representative Cox, so Attorney Sultanic may
19 wish to negotiate with Jimmy Hoffa, but I
20 think employees represent far better.

21 Let me give you an alternative. Just
22 a few weeks ago, we worked with a group of
23 employees in Greensburg Salem School District.
24 These are maintenance and custodial workers
25 who were dissatisfied with their AFL-CIO

1 affiliate. And using the certification
2 process, we helped them start a brand new
3 union, run by and for the employees of that --
4 of that district. And now they're
5 representing themselves.

6 So, they went through the process.
7 They had to do some campaigning. They filed a
8 petition with the Labor Relations Board and
9 attended a couple of hearings without any
10 attorneys, and then they got through the
11 process and are now sitting down, across the
12 bargaining table from their school district.
13 And I guarantee you they're going to get
14 better than what the AFL-CIO got them.

15 MAJORITY CHAIRMAN COX: Ms. Gensel.

16 MS. GENSEL: I would just like to say
17 that Mr. Sultanik is just thinking that it's
18 moving from one union to another, but I'd like
19 to say, even with what Mr. Osborne has said,
20 that there's an alternative to just do your
21 own local. And this is what I mentioned in my
22 opening testimony, that you can't have a
23 blanket organization for the many different
24 circumstances and events that happen in each
25 of the districts.

1 In my school district, we have a very
2 good rapport outside of the union, teachers
3 do, with the administration, and so forth.
4 They will work with us for students and other
5 things.

6 The tension comes in as soon as you
7 enter in PSEA. As soon as you say, like, PSEA
8 wants to sit down with you or the local union
9 wants to sit down you with, there's more of a
10 tension between the give and take.

11 So, in my circumstance, a local union
12 that represented ourselves, we probably would
13 be able to get a whole lot more done and with
14 less tension in between the bargaining,
15 because of our district. Now, I understand
16 that there are some districts that are not
17 like that. But that's why we are arguing
18 here today for that ability to have that
19 choice.

20 If you feel that you need the
21 stronger representation or the power of a
22 stronger union because your district has some
23 issues, then go for that. But maybe in other
24 districts where you don't need that, then we
25 may -- we would have that option to be able to

1 do that.

2 Sometimes the national and the state
3 union directives put us at odds with our own
4 school board. And most teachers don't --
5 would not want to be at odds with them. Most
6 teachers would be willing to do whatever the
7 district is asking us to do because it betters
8 our students or it betters our
9 responsibilities, like, our lessons because of
10 that, but then we're not allowed to because
11 PSEA is saying, like, no, we have to contract
12 that, or you're not allowed to do that, or
13 they're going to put that on you now, and then
14 they're going to ask you to do this and
15 they're going to ask you to do this.

16 And we don't see it as that. We see
17 it as civil servants, and we're looking at it
18 as, but if I do that right now, it eases up my
19 job right now, and it helps the students right
20 now.

21 And so, we would be willing to give
22 that little bit of give and take that a local
23 union, I think, would give, but, again, you
24 have that choice, that if you needed a
25 stronger union, you could -- you could

1 recertify at that time.

2 So, I feel like it just opens up the
3 ability to do what is best for the
4 circumstances that you are in at that time.

5 Thank you.

6 MAJORITY CHAIRMAN COX: Thank you.

7 I've given a lot of thought about
8 this, and as a fifty-two-year-old, I've kind
9 of watched how things have progressed in our
10 society. I think of things like cable
11 television and how there never used to be any
12 choice other than cable television, and then
13 along came satellite, and now we have I don't
14 know how many streaming services out there.
15 It seems like every week I hear about a new
16 streaming service. I don't know how long they
17 end up lasting, but there is a lot of choice
18 out there, and there's a lot of flexibility
19 for people to move around. And so, the age of
20 cable TV being the only option, and prior to
21 that it was, you know, three or four local
22 network channels, right, that were broadcast
23 over the air.

24 I think of the, you know, the
25 telephone market, telecommunications, where

1 everybody had a landline even a decade ago.
2 The number of people who don't have a landline
3 now has dropped -- or has increased
4 dramatically and the number of people relying
5 on just a cell phone.

6 So, America, as a society, we've gone
7 in the direction of choice and flexibility in
8 providing those options. You know, I get an
9 email, and more often than not there's an
10 "unsubscribe" button or link at the bottom,
11 and I don't if there was a federal law or
12 somebody in there, but it seemed, like, I
13 couldn't find them for a while, and now pretty
14 much every email I get has one.

15 And so, there is that option to
16 disassociate, even if it's something as simple
17 as an email. But I think that concept -- and
18 I mentioned it earlier -- that concept of
19 being able to associate or disassociate is
20 something that is intrinsically very American.

21 And so I appreciate those who are
22 willing to stand up for the little guy, if you
23 will, and to provide those options. It's
24 important that we give everyone a voice. When
25 I go into a classroom, regardless of whether

1 it's a fourth-grade classroom, a high school
2 classroom, or college students, I talk about
3 what government's main role is. And here in
4 the United States, one of government's main
5 role is to make sure citizens have a voice.
6 We do that through elections. We do that
7 through laws that encourage interaction with
8 entities. We do that in many of ways that I
9 believe are encompassed here in this
10 legislation.

11 So, I'm going to be looking very
12 closely at these bills. We're going to be
13 continuing discussions with stakeholders.
14 We've received some testimony from
15 individuals. We did not, to my knowledge,
16 received testimony from the public-sector
17 unions, at least a large number of them. We
18 received it from the CLEAR Coalition.

19 But I'd encourage any stakeholders
20 that feel their voice was not represented here
21 today to provide us with written testimony.
22 We will have another hearing if they'd like to
23 appear in person, if today was simply a matter
24 of scheduling, but that was not the
25 impression I got from my staff who reached out

1 to them.

2 And so, again, I'd encourage all
3 dialogue to continue. I appreciate, again,
4 the openness you've all had, the difficult
5 circumstances you've described. I wish that
6 didn't have to be the case. And we'd like to
7 make it so that it doesn't have to be the
8 case. We'd like to give options to
9 individuals like yourself, whether a teachers
10 union or otherwise, and have the ability to
11 associate or disassociate, as the case may be.

12 I'd also like to thank our online
13 testifiers for joining us and for sticking
14 with us for the duration of this.

15 It's with my thanks that I'm going to
16 close this hearing.

17 And, again, if you can provide us
18 with additional information, Mr. Cunningham.

19 Mr. Sultanik, if you have additional
20 suggestions or written legislative changes
21 that you've mentioned, if you want to offer
22 them to us, we'll certainly take a look at
23 those and see how we can incorporate those and
24 better change our labor law here in
25 Pennsylvania.

1 So, thank you all, again, and have an
2 enjoyable day. This hearing is concluded.

3 (Whereupon, the hearing concluded at
4 12:00 p.m.)

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Court Reporter
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