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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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November 4, 2022

Delivered via Email

Ms. Catherine Truitt
Superintendent
North Carolina Department of Public Instruction
301 North Wilmington Street
Raleigh, North Carolina 27601

Dear Superintendent Truitt:

On June 27, 2018, the U.S. Supreme Court issued its decision in Janus v. Am. Fed'n of State, Cty., and Mun. Emps., Council 31, holding that a public sector union's extraction of agency fees from a nonconsenting public employee, such as a teacher, violates the First Amendment of the U.S. Constitution.¹ Public school teachers, as public sector employees, are entitled to Janus's protections.² I write to ask about what steps you are taking to ensure teachers are aware that they can no longer be compelled to unwillingly pay unions a fee.

The Court's decision in Janus was broad, standing for the proposition that freedom of speech embodied in the First Amendment "includes both the right to speak freely and the right to refrain from speaking at all."³ As such, the Court stated that "[c]ompelling individuals to mouth support for views they find objectionable violates" the First Amendment's constitutional command and should be "universally condemned."⁴ The Court also held that "compelling a person to subsidize the speech of other private speakers raises similar First Amendment concerns," for, in the words of Thomas Jefferson, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical."⁵ The Court thus concluded that "[n]either an agency fee nor any other payment to [a] union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee *affirmatively* consents to pay."⁶ Therefore, any

¹ 138 S.Ct. 2448, 2456 (2018).

² "[What the Supreme Court's Janus Decision Means for Teacher's Unions](#)," New York Times. June 27, 2018.

³ Ibid. at 2463 (quoting Wooley v. Maynard, 430 U.S. 704, 714, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977)).

⁴ Ibid. at 2463-64.

⁵ Ibid. at 2464 (quoting A Bill for Establishing Religious Freedom, in 2 Papers of Thomas Jefferson 545 (J. Boyed ed. 1950)).

⁶ Janus, 138 S.Ct. at 2486 (emphasis added).

attempt to collect agency fees from nonmembers “must be freely given and shown by ‘clear and compelling evidence.’”⁷

Many states have enacted laws that seem to violate the Supreme Court’s holding in Janus, substantially burdening a teacher’s right of free association.⁸ These laws violate Janus by granting unions special access to teacher orientations, requiring school districts to provide the union with a new employee’s contact information within 10 days of a teacher’s hiring, and granting unions the ability to speak to new teachers on the job.⁹ If the employer does not conduct orientations, unions are permitted to hold individual group meetings without opposing views voiced. In contrast, while unions are granted special privileges and access, employers are prohibited from discouraging union membership or articulating the disadvantages of joining a union.¹⁰ The aim of these laws is clear: to lawlessly ignore Supreme Court precedent by granting public sector unions unprecedented favoritism in the workplace, while silencing dissent. As many states have passed or are contemplating passage of these draconian measures, it is imperative that all current and prospective teachers be aware of their First Amendment rights of free association.

Therefore, I write to inquire into how the Court’s holding in Janus is being implemented within the school districts under your purview. Please provide a response by November 18, 2022. When answering, please include the response below each question, rather than in a singular, narrative format.

1. Does your department have a policy in place to ensure that teachers are fully informed of their First Amendment rights—including their right to refuse to pay union dues as well as their right not to associate with the union?
 - a. If so, how does your department enforce this policy?
 - b. What are the consequences for a school or school district violating this policy?
2. Does your department have a policy in place that local educational agencies ensure teachers affirmatively consent to union membership before dues are withdrawn from their paychecks?
 - a. If so, how does your department enforce this policy?
 - b. What are the consequences for a school or school district violating this policy?

⁷ Ibid.

⁸ “[Teachers Unions in the Post-Janus World: Defying Predictions, They Still Hold Major Clout.](#)” Education Next, Vol. 20, No. 4. July 7, 2020.

⁹ Ibid.

¹⁰ See [Summary of S. 2137/A-3686 “NJ Workplace Democracy Enhancement Act”](#) (prohibiting employers “from encouraging unit members to resign or relinquish membership in the union and from encouraging unit members to revoke authorization of dues deductions”); [Substitute Bill No. 908, Connecticut General Assembly](#) (“It shall be a prohibited practice for a public employer to: (1) Encourage an employee to resign or decline to obtain membership in a 183 public employee organization, (2) encourage an employee to revoke authorization for a payroll deduction of dues to a public employee organization”)

3. Notwithstanding any existing policies, what specific actions is your department taking to inform both current and prospective teachers about their right to decline association with a teachers' union and withhold or revoke dues if they so choose? Please list the measures your department has implemented to that end.
4. Has your department been made aware of any teacher or school district employee who has attempted to decline union membership and/or revoke dues withdrawal and has been subjected to intimidation or experienced difficulties?
 - a. What civil rights protections have you provided to such individuals?
 - b. Do you have an easily identifiable source of information on rights and protections for school district employees who feel their rights have been violated?
 - c. What penalties apply to school districts that violate the First Amendment rights of school district employees in your state?
5. What preventive measures is your department taking to minimize intimidation or coercion to continue to pay union dues by local, state, or national public sector union operatives?

Thank you for your attention to this matter.

Respectfully,



Richard Burr