

JUNE 2019



DPCC

WORKERS FIGHT BACK

One Year Since Janus v AFSCME

DEMOCRATIC POLICY & COMMUNICATIONS COMMITTEE

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SUMMARY

WORKERS FIGHT BACK!

June 27, 2019, marks the one-year anniversary of the *Janus v. AFSCME* decision. Following the Supreme Court's decision, Republicans, their wealthy donors, and dark money groups have continued their efforts to rig the system against workers through the courts and state legislatures.

However, instead of backing down, workers are fighting back! Union membership is increasing and public support for unions is at a 15 year high.¹ Public servants are fighting back through protests and electoral victories to protect wages, benefits, and funding for important public services such as education, home health care, and public safety. Workers are mobilizing and winning but in the face of continued attacks it's going to take elected officials at all levels of government, workers, and their communities fighting together to stop this radical agenda.

REPUBLICANS HAVE DOUBLED DOWN ON THEIR ANTI-WORKER AGENDA AND STRATEGIES.

- 1. Radical right-wing "dark money" groups fund anti-union legal cases that have made their way to the Supreme Court.** For example, the State Policy Network, a network of think tanks funded by dark money, has budgeted over \$80 million to "defund and defang" public-sector unions.² At least 70 legal cases across the country are being funded by dark money organizations attempting to weaken the voice of public-sector workers.³
- 2. Campaigns:** In statehouses across the country, dark money groups are pushing legislation to further restrict the ability of public servants to have a voice in the workplace. Currently 28 states have enacted so called "Right-to-Work" laws, which seek to undermine the organizing ability of working people.

WORKERS ARE FIGHTING BACK!

- 1. Union membership is on the rise:** The American Federation of State, County and Municipal Employees (AFSCME), the largest public-sector union in the country, added more than 27,000 dues-paying members and retirees over the last year.⁴ The National Education Association (NEA) has gained more than 217,000 new members since the *Janus* decision.⁵
- 2. Public support:** According to a recent poll, 62% of Americans approve of labor unions, the highest level recorded in the past 15 years.⁶
- 3. Teachers are holding local governments accountable:** In the last year, teachers in 15 states have gone on strikes and walkouts calling for major investments in public education. This includes major protests in West Virginia, Oklahoma, and Arizona.

BACKGROUND

On June 27, 2018, by a 5-to-4 vote, the Republican-appointed majority on the Supreme Court issued a decision in the case of *Janus v. AFSCME*, significantly curtailing the ability of public-sector unions to collect “fair share” fees from public-sector employees that they represent. The court’s ruling overturned the 41 years of precedent set by *Abood v. Detroit Board of Education*.

Many public-sector unions are required by law to negotiate and provide services to all employees in the workplaces that they represent, regardless of whether or not those employees are actually members of the union. Many unions therefore collect fair share fees from employees who benefit from union representation but are not union members in order to cover the costs the union incurs representing and negotiating on behalf of those employees. By placing major restrictions on the collection of fair share fees, the Republican-appointed majority on the Supreme Court and right-wing anti-labor groups sought to weaken the ability of public-sector workers to collectively bargain for better wages and benefits.

These ultra-conservative groups also wanted to sow discord among workers. By preventing public-sector unions from collecting fair share fees, *Janus* exacerbated the “free rider” problem faced by many unions. Because unions are generally required to provide the same representation services to non-members that they give their dues-paying members, employees can now choose not to join or support the union at all but retain access to services that are made possible by the contributions of their coworkers. This situation makes it harder for workers to stand together in solidarity because more and more may choose to take union services without paying for them.

The fight to guarantee basic labor rights and fair benefits for teachers, firefighters, police officers, childcare providers, and many more public servants is not over. Dark money groups that allow millionaires, billionaires, and corporate interests to donate money to anti-labor causes in secret are still very active. These dark money groups are pushing a new wave of attacks against the people who educate our children, protect our neighborhoods, and perform core services of local government.



It's time to guarantee basic labor rights for all public-sector workers by passing the Public Service Freedom to Negotiate Act!

Workers are winning but Congress needs to act.

DOUBLING DOWN ON ANTI-WORKER AGENDA AND STRATEGIES

*Radical Right-Wing Dark Money Groups Fund Anti-Union Legal Cases
That Have Made Their Way to the Supreme Court.*

Janus was the result of a multi-year, multi-case legal campaign by a small group of foundations with ties to corporations and radical right-wing millionaires and billionaires. These foundations spend millions of dollars on radical and unpopular political causes like attacking the rights of public-sector workers and the unions that represent them. The foundations are not legally required to publicly disclose their donors. Due to the lack of transparency around where exactly this money comes from and who these organizations are beholden to, this type of funding is often referred to as “dark money.” Among the most prominent foundations and distributors of dark money include the Charles G. Koch Foundation, the Bradley Foundation, the Ed Uihlein Family Foundation, the Walton Family Foundation, DonorsTrust, and Donors Capital Fund

Many of these dark money donors also give to the Federalist Society, whose executive vice president, Leonard Leo, has raised over \$250 million to advance a right-wing judicial agenda. Leo’s spending includes tens of millions spent via the Judicial Crisis Network to promote the Supreme Court confirmations of Neil Gorsuch and Brett Kavanaugh.⁷

*By promoting the confirmation of Gorsuch, the dark money network of foundations secured enough right-wing justices on the Supreme Court to guarantee their preferred outcome when *Janus v. AFSCME* was decided in June 2018.*

Both Gorsuch and Kavanaugh, as well as nearly 90% of the appellate judges nominated by Donald Trump, are card-carrying members of the Federalist Society, and they share the anti-worker agenda of that group and the dark money interests that fund it.⁸ Many of the judges who have received lifetime appointments to the federal bench during the Trump Administration have long records of hostility toward the rights of American workers including collective bargaining, worker health and safety, and fair labor practices.

THE DARK MONEY ATTACK DOGS

Dark money foundations bankrolled the main organizations that devised and pushed the *Janus* case through the federal courts. The two groups that represented the *Janus* plaintiffs, the National Right to Work Legal Defense Foundation and the Liberty Justice Center, are funded by dark money.⁹

The Liberty Justice Center is a project of the Illinois Policy Institute (IPI), a right-wing think tank. According to a *New York Times* report, IPI is largely funded by Richard Uihlein, an Illinois industrialist who has spent millions of dollars backing Republican candidates and anti-union efforts in recent years.¹⁰ Following the Supreme Court's *Janus* decision, Mark Janus, the Illinois state employee who acted as the plaintiff in the case, quit his public-sector job and went to work full-time for IPI.¹¹

Another dark money recipient is the State Policy Network (SPN). SPN is a coordinated set of think tanks with a combined budget of over \$80 million whose goals include to “defund and defang... government unions.”¹² SPN also receives backing from tobacco companies and other corporate groups.¹³

SPN members were responsible for 13 of the 19 amicus briefs filed by interest groups against public-sector workers in the Janus case.¹⁷

DARK MONEY NETWORK CONTINUES ITS LEGAL ASSAULT ON PUBLIC SERVANTS

Emboldened by the *Janus* decision, dark money donors and their attack dogs have launched a wave of new attacks against public-sector workers and the unions that represent them. In a recent interview, the president of the National Right to Work Foundation claimed there are “at least 70 cases out there” that seek to build on *Janus* and weaken public-sector organizing.¹⁴ The National Right to Work Foundation is currently pushing almost half of these anti-union cases.¹⁵ Other major litigants in these cases include the Illinois Policy Institute, the Freedom Foundation, the Buckeye Institute, and the Commonwealth Foundation, all four of which are members of the State Policy Network.¹⁶

The current legal attacks on public-sector workers vary, but all have the intended goal of draining union resources and putting barriers between workers and the unions that represent them. Notable tactics include:

- Trying to claw back fair share fees that have already been spent to represent workers.
- Throwing up more barriers for workers trying to sign up for union membership.
- Undermining the ability of public-sector workers to vote for an exclusive representative.

To date, unions have won all of the post-*Janus* court cases that dark money groups have orchestrated against them. However, Republicans continue to pack the courts—from the Supreme Court down—with judges that consistently side with employers and corporate interests over the rights of employees.

DARK MONEY GROUPS ARE PUSHING RADICAL JUDGES

In the face of continued legal attacks, public-sector unions have won in courtrooms across the country, but dark money groups are still trying to stack the deck against hard-working public-sector workers. Dark money groups are currently pushing Senate Republicans and the Trump Administration to nominate individuals to the federal bench who closely align with their fringe, anti-worker views. Dark money groups seek out and push radical nominees for lifetime appointments to federal courts in an attempt to permanently rig the courts against the public and working people.

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For example, last year, the Trump Administration nominated and the Republican Senate confirmed Britt Grant to be a judge on the United States Court of Appeals for the Eleventh Circuit. Ms. Grant's appointment to the federal bench was pushed through the Senate even though she has consistently worked to undermine public-sector workers. While working in the Office of the Georgia Attorney General, Grant was involved in an amicus brief in which Georgia and eight other states supported the elimination of fair share fees, a position the Supreme Court ultimately adopted in *Janus*.

Another recent Trump appointee to the federal bench, Steven Grasz, was nominated for a lifetime appointment with full knowledge that he harbored strong views against police and fire fighter unions. In 2013, while speaking at a convention to review the charter of the City of Omaha, Grasz spoke in favor of a proposal to eliminate basic worker protections for Omaha's fire and police chiefs.

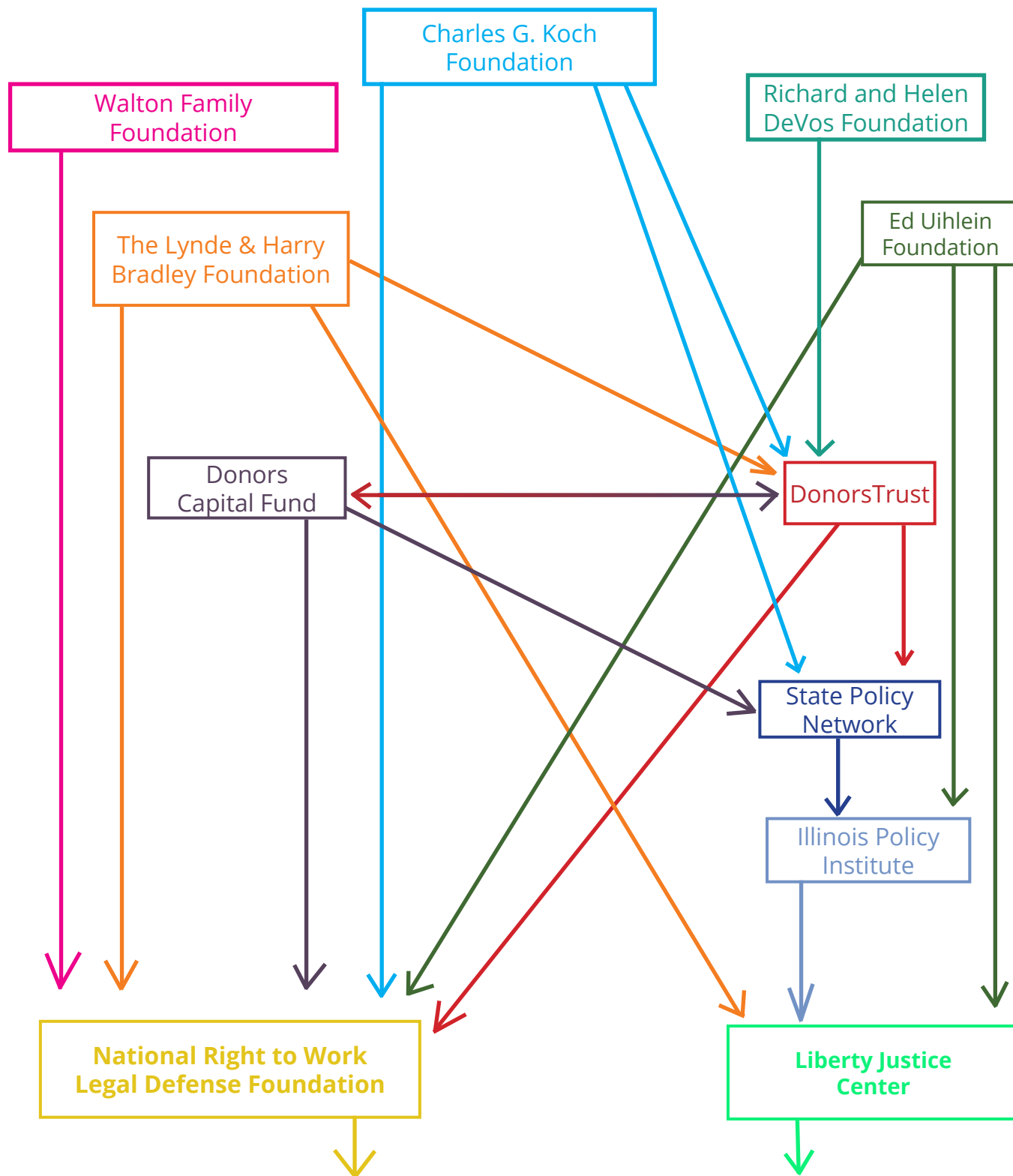
The most controversial nominee to a federal judgeship, Justice Brett Kavanaugh, has a long history of favoring employers over unionized employees. For example, in seven dissents authored while he was on the D.C. Circuit, Kavanaugh opposed workers—including their right to collectively bargain—in every single one.

FROM THE COURTHOUSE TO THE STATEHOUSE, UNIONS ARE UNDER ATTACK

Dark money groups and corporate interests have also spent heavily to influence the legislative process in state and local governments around the country. Through the American Legislative Exchange Council (ALEC), dark money is funneled into pressuring Republican-controlled state legislatures to pass anti-union legislation drafted by ALEC. Unsurprisingly, ALEC is funded by the same secretive foundations that were behind *Janus*, including the Bradley and Charles G. Koch Foundations.¹⁸

Following the *Janus* decision, ALEC developed an anti-union legislative “toolkit” that includes a number of “model bills” that would further restrict the ability of public-sector workers to organize at the state level.¹⁹ ALEC bills include:

- **Public Employee Rights and Authorization Act:** This bill would codify the *Janus* decision at the state level, making it impossible for public-sector unions to collect fair share fees.²⁰
- **Union Recertification Act:** This bill would require workers to vote every even year between August and December to continue with their current union representation. This would cause chaos not only for teachers and first responders but also local governments that would have to manage the election process. Requiring these elections to overlap with major statewide elections would cause further confusion and place an even greater burden on public-sector employees.²¹



*The Janus Legal Effort**

Each arrow represents financial contributions from the source group to a target group.

* This chart is not exhaustive, and only represents major contributors whose identities are known.

WORKERS ARE FIGHTING BACK

Public-sector workers provide services that keep our communities running. These public servants are our teachers, childcare providers, health care workers, librarians, fire fighters, police officers, EMTs, and sanitation workers. Public-sector workers educate our future workforce, keep our neighborhoods safe, and promote public health.

The *Janus* decision and further attacks from dark money groups don't just harm public-sector workers. They also harm our local communities. When public-sector workers stand up for their rights, they also protect the public interest by ensuring that the basic functions of government (e.g. education, law and order, sanitation) are carried out by a well-trained and highly professional group of workers.

UNION MEMBERSHIP IS ON THE RISE

Following the *Janus* decision, working people have stood up to defend their rights by organizing, joining and forming unions, and taking collective action.

Interest in the American Federation of Teachers (AFT) and the National Education Association (NEA), the two largest teachers' unions, has surged as they support teachers in their fight for better education funding across the country.

- More than 217,000 new members have joined NEA since the *Janus* decision. The Association has more members today than it did last year before the Court's decision.²²
- In 2018, AFSCME, the largest public-sector union in the country, added more than 27,000 dues-paying members and retirees.²³
- As police officers and firefighters continue to fight for better funding for public safety, training, and equipment, their unions also are gaining members.

The *Janus* decision did not catch unions unprepared. Even before the Court issued its opinion, unions had been preparing and organizing.

- Since 2016, AFSCME has led more than 245 successful organizing campaigns and has seen a surge in union popularity and interest following *Janus*.²⁴
- Nearly 200,000 of the workers who were paying only the cost of representation converted to full-time members in the lead up to the decision.²⁵

As people across the country continue to feel the impact of anti-worker policies on themselves and their communities, these organizing efforts have only accelerated.

MAJORITIES IN NEARLY ALL MAJOR U.S. SUBGROUPS APPROVE OF LABOR UNIONS²⁶

| | % APPROVE | % DISAPPROVE | % NO OPINION |
|------------------|-----------|--------------|--------------|
| U.S. Adults | 62 | 30 | 8 |
| GENDER | | | |
| Men | 60 | 32 | 8 |
| Women | 64 | 28 | 7 |
| REGION | | | |
| East | 69 | 25 | 6 |
| Midwest | 65 | 26 | 9 |
| South | 60 | 32 | 8 |
| West | 58 | 35 | 8 |
| AGE | | | |
| 18-34 | 65 | 24 | 11 |
| 35-54 | 60 | 33 | 7 |
| 55 and older | 62 | 32 | 6 |
| EDUCATION | | | |
| College Graduate | 70 | 25 | 5 |
| Some College | 61 | 33 | 7 |
| No College | 57 | 32 | 11 |
| PARTY ID | | | |
| Republican | 45 | 47 | 9 |
| Independent | 62 | 29 | 9 |
| Democrat | 80 | 15 | 5 |

This broad public support for unions has translated into victories for organized labor and workers' rights. Just this month, the Democratic governor of Nevada signed into law a bill granting state workers collective bargaining rights for the first time in the state's history. The Democratic bill, which passed on a party-line vote, ensures that state workers have the right to collectively bargain for wages, benefits, and working conditions, and provides for arbitration to resolve disputes between bargaining units and employers.

In 2017, Republicans passed a bill in Missouri that would have prevented unions from signing contracts that required fair share fees. Union organizers in Missouri gathered over 300,000 signatures in opposition to the bill, more than three times the number of signatures required to put the law up for a public referendum. Despite millions of dollars in anti-union spending from dark money groups and out-of-state interests, including the National Right to Work Foundation and Richard Uihlein, the people of Missouri roundly rejected Republicans' anti-worker bill in August 2018, with over 67% voting in favor of the unions. Despite this overwhelming support from voters in Missouri, the *Janus* decision now prevents public-sector unions from collecting fair share fees. However, defeating the anti-worker bill in Missouri preserved a critical organizing tool for private-sector unions.

A recent Gallup poll found public approval of labor unions is at 62%, the highest it has been in 15 years.³⁰

TEACHERS ARE HOLDING LOCAL GOVERNMENTS ACCOUNTABLE

Our nation's teachers have been on the front lines fighting against dark money efforts to undermine public workers.

West Virginia

In 2015, West Virginia was ranked 46th in the United States in terms of average teacher salary. By 2016, the state had fallen to 48th place.²⁷ In 2018, after the Supreme Court heard the arguments in *Janus*, Governor Jim Justice signed legislation that kept salary increases below the rate of inflation and allowed healthcare costs to soar. Rather than accept changes to their compensation that would lead to even greater economic insecurity, West Virginia's teachers—led by union members—chose to go on strike statewide. Over 20,000 teachers participated, and they were ultimately successful in negotiating a 5% pay increase.²⁸

When workers unite and stand up for themselves, they inspire others to do the same. Since the strike in West Virginia, there have been at least 14 major walkouts throughout the country.

Oklahoma

In Oklahoma, workers won a \$6,000 raise for teachers, a \$1,250 raise for support staff, and increased public school funding after a ten-day teacher walkout.²⁹

Colorado

In Denver, teachers went on strike for the first time in 25 years, protesting salaries that had fallen below the cost of living and a compensation system that created financial instability. As a result of collective action, the local union was able to reach an agreement with the school district to secure a nearly 12% raise for teachers with cost-of-living adjustments going forward.³¹

Arizona

Cutbacks to education funding left Arizona with about 2,000 vacant teaching positions after the 2017-2018 school year.³² During the course of that school year, the state had hired over a thousand teachers using Emergency Teaching Certificates, enabling the state to hire people who had no formal training or qualifications to work as teachers.³³ After they walked out in 2018, teachers in Arizona secured a raise of nearly 9% and increased funding for support staff and school resources, ensuring that the education system will be better funded and more attractive to qualified applicants.

These walkouts were started by local teachers but they evolved into successful statewide protests thanks to the support and experience of union organizers who helped coordinate the protestors and provide resources and infrastructure.³⁴

One of the teachers who participated in the Arizona walkouts, Christine Marsh, had been the state's Teacher of the Year in 2016. Last July, Marsh testified to Senate Democrats about the role that NEA and other unions had played in supporting and organizing Arizona's teachers. Nearly 70,000 people were involved in protests led by "grassroots teachers who have had enough," she said.

COLLECTIVE ACTION BY TEACHERS IN 2018-2019

| STATE | LOCATION | DATE STARTED | END DATE |
|----------------|----------------------------------|-------------------|----------------------|
| West Virginia | Statewide | February 22, 2018 | March 7, 2018 |
| Virginia | Virginia Commonwealth University | February 28, 2018 | May 12, 2018 |
| Kentucky | Statewide | April 2, 2018 | One day strike |
| Oklahoma | Statewide | April 2, 2018 | April 12, 2018 |
| Georgia | DeKalb County | April 19, 2018 | April 23, 2018 |
| Arizona | Statewide | April 26, 2018 | May 3, 2018 |
| Colorado | Statewide | April 27, 2018 | May 12, 2018 |
| North Carolina | Statewide | May 16, 2018 | One day strike |
| California | Los Angeles | January 14, 2019 | January 22, 2019 |
| Virginia | Statewide | January 28, 2019 | One day strike |
| Colorado | Denver | February 11, 2019 | February 14, 2019 |
| California | Oakland | February 21, 2019 | February 28, 2019 |
| North Carolina | Statewide | May 1, 2019 | One day strike |
| South Carolina | Statewide | May 1, 2019 | One day strike |
| Tennessee | Nashville | May 3, 2019 | Negotiations ongoing |



Colorado teachers strike for the first time in 25 years.

THE PUBLIC SERVICE FREEDOM TO NEGOTIATE ACT

Sponsored by Senator Mazie Hirono

The *Janus* decision was the culmination of years of well-funded attacks on unions by powerful billionaires and corporate interests. However, rather than collapse, public-sector unions have become more energized. Seeing unions supporting and organizing teachers in protests around the country has inspired a new wave of labor activism and organization.

In Virginia, Nicole Loch, who had worked as a teacher for 11 years without joining a union, became a member of her local NEA affiliate the day after attending a rally at the state capitol. After participating in the rally, Loch thought of the underpaid, underappreciated teachers she worked with and how “there are many educators in my building—as in many schools—who don’t know how powerful they are until they organize.”³⁵

Congress must ensure that public servants like Loch aren’t alone in their fight. Immediately following the Supreme Court’s decision in *Janus*, Senate Democrats, led by Senator Mazie Hirono, and Democrats from the House of Representatives introduced the Public Service Freedom to Negotiate Act.

The Public Service Freedom to Negotiate Act reaffirmed that it is the policy of the United States government to encourage collective bargaining for all workers, whether they are in the private or public-sector. The bill provides public employees the right to organize, act concertedly, and bargain collectively in states that currently do not afford these basic rights. The Act grants the Federal Labor Relations Authority (FLRA) the ability to determine whether a state, territory, or locality provides public employees with the following labor rights and responsibilities:

- The right of public employees to self-organization.
- The right to form, join, or assist a labor organization and to bargain collectively through representatives of their own choosing.
- The right to engage in other concerted activities for the purposes of collective bargaining or other mutual aid (including the filing of joint class or collective legal claims) or protection.
- The requirement that public employers collectively bargain with recognized labor organizations over wages, hours, and other terms and conditions of employment and that any agreements be committed to in writing in a contract or memorandum of understanding.

- Access to a dispute-resolution mechanism such as fact-finding, mediation, arbitration, or comparable procedures and providing for the voluntary payroll deduction of labor-organization fees.
- Real enforcement of all rights, responsibilities, and protections provided by state law, federal law, and of any written contract or memorandum of understanding between a labor organization and a public employer through a state administrative agency or in court.

The Public Service Freedom to Negotiate Act provides states wide flexibility to write and administer their own labor laws provided they meet the standards outlined in the legislation. The bill will not apply in states determined to meet and exceed its standards. Public employers in states that continue to fail to guarantee these basic rights and responsibilities will be subject to federal minimum standards.

It is imperative that Congress support working Americans in their efforts to protect themselves and their communities from dark money-funded attacks such as Janus. Congress must pass the Public Service Freedom to Negotiate Act, and the President must sign it into law.

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