



More Still Needs to be Done to Protect Florida Public Employees

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Florida has come a long way in advancing worker freedom, and the state came even closer to further enhancing protections for public employees in 2021. The state's lawmakers should be commended for these efforts, and for standing up for public employees. That said, the state still has a ways to go, and lessons from labor reforms in other states can serve as a helpful guide.

First the good: workers in Florida already have many laws on the books to protect their rights, and both private sector workers and public employees have more protections in Florida than in many other states.

Workers in Florida have the right to choose to pay union fees or not, thanks to Florida's right-to-work law. Not only was Florida one of the first states to enact

right-to-work, but it also did so through the robust protection of the state's constitution. Voters amended the state constitution in 1944, three years before Congress amended national labor law to explicitly allow right-to-work. And, unlike other states, Florida public employees have the right to opt-out and stop paying union fees at any time. In other words, Florida has historically been at the cutting edge of protecting its workers.

Right-to-work means that a union cannot get a worker fired for not paying them. While private sector workers are protected by Article 1, § 6 of the state constitution, in 2018 the United States Supreme Court in *Janus v. AFSCME* wrote that all public employees (in Florida and around the country) have a First Amendment Right under the U.S. Constitution to choose to pay government union fees or not. The Supreme Court said that everything government unions do is political and, because of this politics, public employees have a First Amendment Right to pay or not. In short, private sector workers are still protected by Florida's constitution but since 2018 public employees are also protected by the U.S. Constitution.

Still, simply saying that public employees have a Constitutional right to choose to pay union fees or not is not enough; they need to be informed of their rights and be given a regular choice to exercise those rights. During the 2021 legislative session, several policy reforms were introduced to further the rights of public employees. Legislators such as Sen. Dennis Baxley, Sen. Ray Rodrigues and, and Rep. Cord Byrd advanced legislation including House Bill 835, House Bill 947, Senate Bill 1014, Senate

Bill 78, which would have returned Florida to its traditional status as one of the leaders of labor reform in the country.

Each proposal had different components, and some applied to different types of public employees. Taken together, however, they would have ensured good bookkeeping, protected public employee paychecks, enhanced union democracy, and protected Florida taxpayers.

The proposals would have guaranteed that public employers obtain consistent consent directly from employees before deducting money from their paychecks. They would have also ensured that public employees were informed of their rights to not join or pay a union, and were given a periodic choice about whether they wanted to continue paying union dues or fees.

These provisions were similar to 2020's House Bill 1, which the Florida House passed in March of that year, but which ultimately did not pass the full legislature.

A 2019 poll conducted by The James Madison Institute and Workers for Opportunity showed the popularity and need for these changes. Over 70 percent of likely voters, including 63 percent of public sector union households, agree that the "government must get a government worker's permission to deduct union dues from their paycheck."

The poll also showed that nearly 80 percent of voters and 75 percent of public sector union households agreed that if a public employee "was not properly informed of their right to refrain from union membership" then they should be given "a chance to make a fresh decision after being properly informed of their rights."

The 2021 reform proposals would have also strengthened union democracy by allowing more public employees to vote to recertify the union at their workplace. In March of 2018 lawmakers in Tallahassee passed House Bill 7055 which amended FLA. STAT. § 1012.2315(4)(c) and gave teachers the right to vote to keep the union at their workplace or remove it if membership in that union dropped below 50 percent. This was important because many unions in Florida school districts were organized in the early 1970s, before most Florida teachers were even born, let alone having had the chance to vote on the union in their school. An analysis by the Heritage Foundation showed that, almost a decade ago, only one percent of working teachers had a chance to vote for the union in their school.

The 2019 poll also showed that over 60 percent of voters and a majority of public sector union households agreed that the right of teachers to recertify their union should be extended to other public employees. Recognizing that more than just teachers deserved a choice about who would bargain on their behalf, the package would have expanded the right to recertification to many other public employees.

In addition to expanding recertification rights to more public employees, the package would have added procedural protections to ensure the accuracy of any recertification election. As currently enforced, the state does little to verify membership information published by unions when evaluating whether they have reached the 50 percent threshold required to maintain exclusive bargaining status.

The stronger documentation required by the package would have required data to be certified by the employer, thereby providing a built-in method to verify whether unions actually met the 50 percent membership threshold and would not need to stand for reelection.

The need for this verification and proof was shown in a 2019 examination of self-reported numbers by teachers' unions, which showed many of the unions hovering just above the needed 50 percent membership threshold. With numbers that close, more verification is needed to ensure accuracy.

It should be noted that many of the provisions in the proposals were similar to suggestions made in the January 2020 James Madison Institute's Issue Commentary by this author: "Protecting Democracy and the First Amendment for Florida Public Employees."

Florida had perhaps one of the best proposals of reform in the country and, while they came very close to passing, they ultimately did not. Other states, however, were able to achieve similar reforms.

Lawmakers in Indiana passed Senate Bill 251 protecting teachers' paychecks. Similar to provisions in Florida's package, Indiana's legislation safeguarded school employees' choice to join and pay union dues or not. Teachers in Indiana now are protected from having money taken from their paycheck without direct annual consent and employer confirmation.

As bill sponsor Sen. Phil Boots (R) pointed out, "If a teacher wishes to be a member of a union, this law will not hinder their ability to do so ... This legislation was

introduced after lawmakers heard from teachers who felt they were not given an appropriate amount of flexibility.”

In West Virginia, lawmakers stopped the state from acting as the unions’ bill collector by passing Senate Bill 272. They also safeguarded the ability of independent workers to be their own boss by clarifying the standards for determining whether a worker is an employee or an independent contractor, thanks to Assembly Bill 2257.

Senate Judiciary Committee Chairman Charles Trump said the legislation “recognizes the reality of our 21st Century life, and that is we do not need to have organizations making deductions from people’s paychecks for these things anymore. It’s too easy now. Anyone who wants to belong to a club or a labor organization or a country club can easily have an automatic withdrawal set up from his or her checking account.”

Notably, Arkansas lawmakers enacted Senate Bill 341 which entirely prohibits collective bargaining by government unions. In doing so, Arkansas joins several other states which allow public employees to work directly with their employer without needing to go through a union.

Bill Sponsor Sen. Bob Ballinger noted that the legislation “doesn’t prohibit

[public employees] from unionizing, it just prohibits state actors from negotiating with them through a collective-bargaining agreement.”

Finally, in Tennessee, lawmakers in Nashville took another step in bringing their state closer to Florida by passing legislation for a ballot proposal to make right-to-work a constitutional right. Thanks to Senate Joint Resolution 648, Tennessee voters will have an opportunity on the November 2022 ballot to decide if they want to enshrine worker freedom in the state constitution.

The lead proponent of Tennessee worker freedom, Sen. Brian Kelsey, said the “amendment will guarantee future generations of Tennessee workers their right to work regardless of whether they choose to join a union.”

2021 was a good year for furthering worker freedom and protections for public employees and taxpayers. In the last several years, Florida has made many advances and has achieved some success, but there is still work to be done to maintain its status as a historic leader in worker freedom. The Sunshine State has an opportunity in 2022 to illustrate its leadership by enacting reforms that advance the freedoms of choice, opportunity, and assembly for all public sector workers.