

**Statement of Terence J. Pell**

**President, Center for Individual Rights**

**State Legislative Response to *Janus v AFSCME***

**October 25, 2018 | 11:00 a.m.**

**Hearing Room No. 1 | North Office Building  
State Capitol  
Harrisburg, PA 17120**

Thank you for the opportunity to testify today about the need to make changes in Pennsylvania law to fully implement the Supreme Court's decision last summer in *Janus v. AFSCME*.

My name is Terence Pell and I am the President of the Center for Individual Rights, a nonprofit public interest law firm in Washington, DC that has challenged mandatory union agency fees in two national cases, most notably in *Friedrichs v. California Teachers Association* a case that directly preceded the *Janus* case.

The Supreme Court ruled last summer that forcing public employees to financially subsidize an organization with which they fundamentally disagree violates their First Amendment right against compelled speech.

Protecting the free speech rights of public school teachers is particularly important. One of the most contested political disputes in our country concerns how to best educate our children. Before the *Janus* decision, many teachers were forced to subsidize the union's view of such education reforms as parental choice, merit pay, seniority based school assignment, and promotion and layoff policies.

All of these issues go to the heart of education reform. And, almost across the board, unions oppose these reforms, whereas many teachers, especially younger teachers, support them. Up until *Janus*, teachers who disagreed with the union view were nonetheless forced to pay the union to speak on their behalf. Fortunately, that all changed with *Janus*.

What is needed now is clear legislation that settles once and for all fair and open procedures that let each employee exercise his or her right to support -- or not to support -- union sponsored speech. If the rules aren't settled now by legislation, they will be determined by aggressive tactics by unions to keep their members.

Union efforts to make it difficult and confusing to leave the union are well-known. The requirements are hard to find and difficult to follow. As a result, many employees simply give up and end up providing financial support for speech with which they disagree. If the legislature doesn't step in, the impediments to free choice by public employees will have to be litigated case by case through the courts at great expense to the state and to individual workers.

I want to talk about two sections of Senate Bill 1278 that that should be enacted if Pennsylvania is to make good on the promise of *Janus*.

Section Two of the Act adds several provisions to Pennsylvania law that require every public employer to annually notify each public employee of the right to leave the union. Section Two also requires affirmative consent before membership dues may be deducted. (The legislature may want to consider requiring that such consent be required annually.) And it prohibits the use of pressure tactics designed to coerce employees into signing a consent form, such as forced meetings, publication of employee decisions, contact at home, etc.

Then, most importantly, Section Two provides every public employee with a clear and definitive method to exercise their right to leave the union with a simple, postmarked letter that makes resignation effective thirty days after the postmark date.

Section Five of the Act goes on to make it unlawful to include so-called maintenance of membership provisions in collective bargaining agreements. These provisions typically require a member to remain in the union until the next contract anniversary at which time they must exercise their right to leave within a narrow time frame.

Often the anniversary occurs during the opening weeks of the school year when it is most difficult for employees to follow complicated procedures to opt out of another year of membership. The result resembles a magazine subscription that keeps renewing unless one goes to the trouble to find out how to end it.

The First Amendment does not allow the state to create burdens designed to make it difficult for the average person to exercise their free speech rights. Senate Bill 1278 is a sensible, comprehensive piece of legislation that addresses the common impediments that are arguably unconstitutional after the *Janus* decision. Senate Bill 1278 would prevent the need for endless, expensive litigation to establish procedures that protect the free speech rights of public employees.

Let me make one final point. The purpose of clear procedures set forth by statute is not to game the decision of individual workers one way or the other, either by favoring union membership or favoring the efforts of those who want to leave. The purpose is to provide clear, easy to understand, and fair procedures that allow each employee to make their own decision without fear or coercion.

Thank you for considering this legislation and inviting me to speak to you about the need for it. I am happy to answer any questions the committee might have.

**Contact:** Terence J. Pell, President, Center for Individual Rights, 1100 Connecticut Ave, NW, Ste. 625, Washington, DC 20036. Tel: 202-833-8400, email: [pell@cir-usa.org](mailto:pell@cir-usa.org)