

GOVERNMENT COLLECTION OF UNION DUES: OVERVIEW AND MODEL LEGISLATION

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**“TAXPAYER MONEY SHOULDN’T
BE USED TO SUPPORT THE
COLLECTION OF UNION DUES.”**

~ **TEXAS GOVERNOR**
GREG ABBOTT

KEY POINTS

- State law allows Texas governments to automatically deduct union dues from public sector employees’ paychecks, effectively making the government a party to union activity.
- The proper role of government is to preserve life, liberty, and property—not to act as a dues collector.
- Texas is one of only a handful of states that still allows for automatic paycheck deduction of union dues in the post-*Janus* environment.

ISSUE

Currently, the State of Texas is one of only a few states that permits governmental entities to automatically deduct union dues from public sector employees’ paychecks. These deductions occur after a state or local government employee “complet[es] an authorization form and submit[s] the form to the organization to which the membership fee will be paid” ([Texas Attorney General Ken Paxton, 2020, p. 2](#)). In more recent times, this practice has sparked controversy since, as it may be rightly argued, “the government should have no official role in the affairs of any trade union, labor union, employees’ association, or professional association” ([SB 13 Bill Analysis, 2017](#)). In other words, it is not the function of government to serve as the dues collection agency for a private association and its members.

Texas’ stance on the matter raises legitimate constitutional concerns. In 2018, the U.S. Supreme Court issued a ruling in *Janus v. American Federation of State, County, & Municipal Employees* which, in part, held that: “The State’s extraction of agency fees from nonconsenting public-sector employees violates the First Amendment” (2017). The case stemmed from a legal controversy over whether “all workers employed by a government entity,

1 According to [Section 141.008\(a\)](#), Texas Local Government Code, “The governing body of a municipality with a population of more than 10,000 may deduct from a municipal employee’s monthly salary or wages an amount requested in writing by the employee in payment of membership dues to a bona fide employees’ association named by the employee.” Further, [Section 155.001\(a\)\(2\)](#), Texas Local Government Code, provides: “The commissioners court, on the request of a county employee, may authorize a payroll deduction to be made from the employee’s wages or salary for...payment of membership dues in a labor union or bona fide employees association.” Finally, [Section 22.001\(a\)](#), Texas Education Code, provides that: “A school district is entitled to have an amount deducted from the employee’s salary for membership fees or dues to a professional organization.”

FAST FACTS

The public sector labor environment has undergone significant change post-*Janus*. Consider:

- “In 2023, eight states enacted prohibitions or protections for some deductions” ([Barnes, 2024, para. 1](#)).
- “As a result of *Janus*, more than five million public sector employees across the country are no longer required to pay union dues as a condition of employment” ([Huebert & Schwab, n.d., para. 4](#)).
- “From 2017 (the last report filed before the *Janus* decision) to 2022, AFSCME has lost more than 200,000 dues-paying members and fee-payers” ([Skorup, 2023, para. 11](#)).

no matter their location in the U.S., have right-to-work protections” ([Skorup, 2023, para. 1](#)). While the High Court ultimately delivered a favorable ruling for right-to-work proponents, there are still questions whether Texas’ sign-and-submit system is consistent with the decision. It may not be, according to an advisory opinion issued by Texas Attorney General Ken Paxton, who determined that:

...state agencies appear to have no independent method of confirming that an employee knowingly and voluntarily consented to the payroll deduction without any coercion or improper inducement. To be consistent with *Janus*, at a minimum, the State must ensure that employee consent to a payroll deduction for membership fees or dues in a union or employee organization is collected in a way that ensures voluntariness. ([2020, pp. 2-3](#))

Furthermore, the attorney general argued,

Under the current Texas laws authorizing payroll deductions, an employee’s authorization remains effective until the employee affirmatively revokes or amends it, effectively allowing continuous consent... However, a one-time, perpetual authorization is inconsistent with the Court’s conclusion in *Janus* that consent must be knowingly and freely given. ([p. 3](#))

It should be stressed that the policy and constitutional concerns outlined above either exist or are exacerbated by government involvement. The issues may be best remedied by excising government from its role and allowing private parties to reach and retain their own mutually beneficial agreements. Already, many states are moving in this direction.

According to the National Conference of State Legislatures’, the post-*Janus* landscape has changed considerably with “eight states enact[ing] prohibitions or protections for some deductions” in 2023 alone ([Barnes, 2024, para. 2](#)). Some specific state legislative actions include:

In Arkansas, public employers were expressly prohibited from deducting dues, fees or contributions to labor organizations or political funds. Florida enacted similar prohibitions but made exceptions for unions representing law enforcement and public safety personnel. And Kentucky prohibited deductions for public employees as well. Private employees may have dues deducted, provided the union seeks and maintains written authorization from the employee. ([Barnes, 2024, para. 5](#))

In other states, like New York, Connecticut, Maine, Oregon, and Minnesota, policymakers have enacted legislation banning outright “captive audience” meetings, offering injunctive relief for employees who can show that they have been coerced by their

employer to attend meetings on protected subjects, like religion or union membership. Coercing employees to listen to union speeches becomes even more prevalent during union recruitment campaigns and has largely gone ignored and unpunished. A memo from the National Labor Relations Board General Counsel says, “This license to coerce is an anomaly in labor law, inconsistent with the [National Labor Relations] Act’s protection of employees’ free choice. It is based on a fundamental misunderstanding of employers’ speech rights” ([National Labor Relations Board, 2022, para. 4](#)). Elsewhere, Oklahoma recently considered legislation prohibiting schools “from requiring employees to participate in, distribute communications or membership solicitations for, and grant access to school resources for an employee organization or statewide professional educators’ association” ([SB 1513 Research Analysis, 2024](#)). While the measure ultimately failed to pass, it further evidences the growing national interest in disentangling government from union-specific activity.

Texas is a right-to-work state, meaning that Texans have the right to decide whether to associate with unions or not. When it comes to public sector unions, it is inappropriate for the government to be the mechanism by which unions receive their funds. This arrangement runs afoul of best practices and sound policy since government (as the employer) is acting as an agent of the union, which puts the state in an inappropriate role and may even entangle them with partisan politics. In the same vein, public workers performing duties on public property (like school campuses) should not have to attend meetings

that promote or condemn participation in unions. Threats—implicitly or explicitly—to employment or of discipline related to one’s attendance of such meetings violates the doctrine of free association. To protect public workers and to insulate the government from political entanglement, union dues should be prohibited from being automatically deducted from paychecks and employees should be able to seek relief against employers who compel them to attend meetings in such a way that violates their natural rights.

It should be reiterated that these concerns are not anti-union. Rather, these issues are rooted in government overreach. Governments were never intended to serve as dues collectors for unions nor their promoters. The best path forward is for policymakers to remove Texas state and local governments from their present middleman role.

RECOMMENDATIONS

The 89th Legislature should amend the Texas Government Code and Local Government Code in such a way as to prohibit automatic deduction of union dues from the paychecks of public workers placing the responsibility of paying dues in the hands of the employees who belong to unions.

The 89th Legislature should provide an avenue for relief for public employees that have been compelled to attend meetings that promote or condemn union membership and prohibit schools from providing preferential access to resources to unions. ■

MODEL LEGISLATION

A BILL TO BE ENTITLED

AN ACT

relating to payroll deductions for state and local government employee organizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 22.001(a), Education Code, is amended to read as follows:

(a) A school district employee who is employed in a professional law enforcement capacity is entitled to have an amount deducted from the employee's salary for membership fees or dues to a professional organization. The employee must:

(1) file with the district a signed written request identifying the organization and specifying the number of pay periods per year the deductions are to be made; and

(2) inform the district of the total amount of the fees and dues for each year or have the organization notify the district of the amount.

SECTION 2. The heading to Section 403.0165, Government Code, is amended to read as follows:

Sec. 403.0165. PAYROLL DEDUCTION FOR STATE EMPLOYEE ORGANIZATION: CERTAIN FIREFIGHTERS, POLICE OFFICERS, AND EMERGENCY MEDICAL SERVICES PERSONNEL.

SECTION 3. Sections 403.0165(a), (b), (c), and (d), Government Code, are amended to read as follows:

(a) A covered ~~An~~ employee of a state agency may authorize a transfer each pay period from the employee's salary or wage payment for a membership fee in an eligible state employee organization. The authorization shall remain in effect until the ~~an~~ employee authorizes a change in the authorization. Authorizations and changes in authorizations must be provided in accordance with rules adopted by the comptroller.

(b) The comptroller shall adopt rules for transfers by covered employees to a certified eligible state employee organization. The rules may authorize electronic transfers of amounts deducted from covered employees' salaries and wages under this section.

(c) Participation by covered employees of state agencies in the payroll deduction program authorized by this section is voluntary.

(d) To be certified by the comptroller, a state employee organization must have a current dues structure for covered state employees in place and operating in this state for a period of at least 18 months.

SECTION 4. Section 403.0165(l), Government Code, is amended by adding Subdivision (3) to read as follows:

(3) "Covered employee of a state agency" means:

(A) an individual employed by a state agency in a professional law enforcement or firefighting capacity; or

(B) an individual employed by a state agency in a capacity that meets the definition of "emergency medical services personnel," as that term is defined by Section 773.003, Health and Safety Code.

SECTION 5. The heading to Chapter 617, Government Code, is amended to read as follows:

CHAPTER 617. COLLECTIVE BARGAINING, ~~[AND]~~ STRIKES, AND PAYROLL DEDUCTIONS

SECTION 6. Chapter 617, Government Code, is amended by adding Section 617.006 to read as follows:

Sec. 617.006. PROHIBITION ON COLLECTION OF LABOR ORGANIZATION DUES. (a) Except as provided by Subsection (b), the state or a political subdivision of the state may not deduct or withhold, or contract to deduct or withhold, from an employee's salary or wages payment of dues or membership fees to a labor organization or other similar entity, including a trade union, labor union, employees' association, or professional organization.

(b) Subsection (a) does not apply to deductions or withholdings by:

(1) a state agency under Section 403.0165 or 659.1031; or

(2) a political subdivision:

(A) under Section 141.008 or 155.001(a)(2), Local Government Code; or

(B) under the terms of an agreement entered into under:

(i) Subchapter B or C, Chapter 142, Local Government Code; or

(ii) Chapter 174, Local Government Code.

(c) Subsection (a) does not affect the ability of the state or a political subdivision of the state to deduct or withhold from an employee's salary or wages an amount for donation to a charitable organization determined to be eligible for participation in the state employee charitable campaign under Subchapter I, Chapter 659.

SECTION 7. Section 659.1031(a), Government Code, is amended to read as follows:

(a) An employee of a state agency employed in a professional law enforcement capacity may authorize in writing a deduction each pay period from the employee's salary or wage payment for payment to an eligible state employee organization of a membership fee in the organization.

SECTION 8. The heading to Section 141.008, Local Government Code, is amended to read as follows:

Sec. 141.008. PAYROLL DEDUCTIONS FOR CERTAIN MUNICIPAL FIREFIGHTERS, POLICE OFFICERS, AND EMERGENCY MEDICAL SERVICES PERSONNEL [IN CERTAIN MUNICIPALITIES].

SECTION 9. Section 141.008, Local Government Code, is amended by amending Subsections (a), (a-1), and (a-2) and adding Subsection (a-3) to read as follows:

(a) This section applies only to a municipal employee who is:

(1) a member of the municipality's fire or police department; or

(2) emergency medical services personnel, as defined by Section 773.003, Health and Safety Code.

(a-1) The governing body of a municipality with a population of more than 10,000 may deduct from a municipal employee's monthly salary or wages an amount requested in writing by the employee in payment of membership dues to a bona fide employees' association named by the employee.

(a-2) ~~[(a-1)]~~ The governing body shall make the payroll deduction described by Subsection (a-1) ~~[(a)]~~ if requested in writing by an employee who is a member of the municipality's fire department or emergency medical services personnel ~~[employees who are fire protection personnel as defined by Section 419.021, Government Code;]~~ if the municipality:

(1) receives revenue from the state;~~;~~ and

(2) ~~[if the municipality]~~ permits deductions for purposes other than charity, health insurance, taxes, or other purposes for which the municipality is required by law to permit a deduction.

~~(a-3) [(a-2)]~~ The governing body of a municipality whose police department is not covered by a collective bargaining agreement or meet and confer agreement entered into under this code shall make the payroll deduction described by Subsection (a-1) [(a)] if:

(1) requested in writing by an employee who is a member of the municipality's police department ~~[employees who:~~

~~[(A) are peace officers as defined by Article 2.12, Code of Criminal Procedure; and~~

~~[(B) are not members of a police department covered by a collective bargaining agreement or meet-and-confer agreement entered into under this code]; and~~

(2) the municipality permits deductions for purposes other than charity, health insurance, taxes, or other purposes for which the municipality is required by law to permit a deduction.

SECTION 10. Section 146.002(2), Local Government Code, is amended to read as follows:

(2) "Employee association" means an organization in which municipal employees participate and that exists for the purpose, wholly or partly, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting public employees ~~[and whose members pay dues by means of an automatic payroll deduction]~~.

SECTION 11. Section 146.003, Local Government Code, is amended by adding Subsection (e) to read as follows:

(e) This chapter does not authorize an agreement for deducting or withholding payment of dues, fees, or contributions to a labor organization or other similar entity, including a trade union, labor union, employees' association, or professional organization in violation of Section 617.006, Government Code.

SECTION 12. Section 146.017, Local Government Code, is amended to read as follows:

Sec. 146.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) Except as provided by Subsection (b), a [A] written meet and confer agreement ratified under this chapter preempts, during the term of the agreement and to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by this state or a political subdivision or agent of this state, including a personnel board, civil service commission, or home-rule municipality, other than a statute, ordinance, executive order, civil service provision, or rule regarding pensions or pension-related matters.

(b) A written meet and confer agreement ratified under this chapter may not conflict with or preempt Section 617.006, Government Code.

SECTION 13. Section 155.001(a), Local Government Code, is amended to read as follows:

(a) The commissioners court, on the request of a county employee, may authorize a payroll deduction to be made from the employee's wages or salary for:

(1) payment to a credit union;

(2) payment of membership dues in a labor union or a bona fide employees association if the requesting employee serves:

(A) in a professional law enforcement or firefighting capacity; or

(B) in a capacity that meets the definition of "emergency medical services personnel," as that term is defined by Section 773.003, Health and Safety Code;

(3) payment of fees for parking in a county-owned facility;

(4) payment to a charitable organization; or

(5) payment relating to an item not listed in this subsection if the commissioners court determines that the payment serves a public purpose, unless the deduction would violate another law, including Section 617.006, Government Code.

SECTION 14. This Act takes effect September 1, 2017.

Model Legislation:

- A. No school district, employee of a school district, or employee organization shall deny by any means, including a collective bargaining agreement, a statewide professional educators' association equal access to employees of the school district, to the same extent that access is granted to other educators' associations. For purposes of this section, access shall include, but is not limited to:
 - B. 1. Setting up informational tables at in-service or other similar teacher meetings;
 - 2. Speaking at in-service or other similar teacher meetings; 3. Distributing information in school mail boxes or through the school e-mail system; 4. Utilizing school district meeting rooms during nonworking hours; 5. Representing employees in employment matters, when requested by the employee; 6. Posting information on school district bulletin boards; and 7. Utilizing school district printing services. B. Any association which utilizes school district facilities or services shall reimburse the district for any costs incurred by the district. C. A school district is prohibited from: 1. Requiring or coercing school district employees to meet, communicate, listen to, or otherwise interact with an employee organization or statewide professional educators' association; 2. Distributing communications or membership solicitations on behalf of an employee organization or statewide professional educators' association; and 3. Permitting an employee organization or statewide professional educators' association access to or use of the school district's meetings, events, facilities, communications systems, computer systems, equipment, supplies, or other resources on terms more favorable than extended to any other employee organization or statewide professional educators' association seeking similar access or use.

REFERENCES

- Barnes, Z. (2024, January 31). *Some states strengthened, others limited collective bargaining in 2023*. National Conference of State Legislatures. <https://www.ncsl.org/state-legislatures-news/details/some-states-strengthened-others-limited-collective-bargaining-in-2023>
- Huebert, J., & Schwab, J. (n.d.). *Protecting government workers' First Amendment rights to refuse to join a union*. Liberty Justice Center. Retrieved August 21, 2024, from <https://libertyjusticecenter.org/cases/janus-v-afscme/>
- Janus v. American Federation of State, County, & Municipal Employees, Council 31* 585 U.S. 878 (2018). https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf
- SB 1513 Research Analysis. 59th Oklahoma Legislature. Second Session. (2024, April). <https://legiscan.com/OK/supplement/SB1513/id/458219>
- National Labor Relations Board. (2022, April 7). *NLRB general counsel Jennifer Abruzzo issues memo on captive audience and other mandatory meetings*. <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-jennifer-abruzzo-issues-memo-on-captive-audience-and>
- Paxton, K. (2017, April 4). *We must eliminate automatic deduction of union worker dues from government worker paychecks*. The Dallas Morning News. <https://www.dallasnews.com/opinion/commentary/2017/04/04/we-must-eliminate-automatic-deduction-of-union-dues-from-government-worker-paychecks/>
- SB 13 Bill Analysis. Senate Research Center. 85th Texas Legislature. Regular. (2017, February). <https://capitol.texas.gov/tlodocs/85R/analysis/pdf/SB00013S.pdf>
- Skorup, J. (2023, November 20). *Janus had a large impact on union membership, five years later*. Mackinac Center for Public Policy. <https://www.mackinac.org/blog/2023/janus-had-a-large-impact-on-union-membership-five-years-later>
- Texas Attorney General Ken Paxton. (2020, May 31). *Opinion no. KP-0310*. <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2020/kp-0310.pdf>

