

**MEMORANDUM**

TO: The Senate Committee on Economic Development, Housing and General Affairs  
FROM: Jeff Fannon, Vermont-NEA Executive Director  
DATE: February 14, 2020  
RE: S.254

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Thank you for taking testimony on S.254. My name is Jeff Fannon and I am the executive director of Vermont-NEA, which is affiliated with the National Education Association (NEA). Vermont-NEA represents approximately 13,000 teachers and educational support staff professionals or “ESP” who work primarily in Vermont’s public pre-k to 12 schools.

If you’ll indulge me a bit, I think some table setting may be helpful. In 1977, the US Supreme Court in the *Abood v. Detroit Board of Education* case said that agency fees were permissible because political speech was to be excluded from the fee, and instead the agency fee would only reimburse the union for its costs to represent all employees in the bargaining unit. For the next 41 years that was the law of the land. In June 2018, however, Justice Alito wrote for a 5-4 majority of the Court overturning *Abood*. That 2018 case was the *Janus v. AFSCME* case, and in it, Justice Alito said agency fees were no longer permissible because they violated the free speech provision of the First Amendment.

The *Janus* case did not change in any other way the exclusive representation requirements, because unions must still represent all employees in the bargaining unit whether the employee is a member of the union. Therein lies the need for this bill, S.254, to maintain the balance between a union that is required to represent all employees in a bargaining unit and employees who do not wish to be a member of the union.

Others from whom you have heard testimony in support of the bill, spoke with you about contact information and allowing unions time to meet with new hires to explain the employment rights contained in the contract the union and employer negotiated. I am here to talk with you about those matters and the collection of voluntary union dues and the exclusivity of a union’s access to employee information.

The exclusive bargaining agent, a/k/a the union, has the exclusive right and responsibility to represent all employees in a bargaining unit. In order to be certified as the exclusive bargaining agent, the union must demonstrate a 30% showing of interest and win a Board election. The amendments would provide the employees seeking representation the list of names who will be allowed to vote. Providing the names and information would be exclusive to the employees’ proposed exclusive bargaining agent and no other outside entity because the information is employee information that is necessary for the exclusive bargaining agent to fulfill its role as the bargaining agent for all employees in the bargaining unit. The amendments apply to state employees, teachers, municipal employees, including all school support staff who are not

licensed teachers, and early care educators. In other words, all public employees, public employers, and unions representing public employees would be treated equally.

The amendments allowing for employees to enjoy the right to have voluntary union dues deducted from their paychecks merely allows employees to make voluntary deductions. These amendments would allow but not require employees to voluntarily elect to have union dues deducted from their paychecks without interference from their employer.

The amendments contained in S.254 will facilitate the labor peace the Abood court tried to establish and which it did for 41 years. The Janus case upset the balance, and S.254 will reestablish the delicate balance between protecting an employees' rights and protecting unions subject to the requirement to represent all employees of the bargaining unit.

I am happy to answer any questions you might have. Thank you for your support of S.254.