

MEMORANDUM

TO: The Senate Committee on Economic Development, Housing and General Affairs

FROM: Jeff Fannon, Vermont-NEA Executive Director

DATE: January 23, 2020

RE: S.254

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 representing 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 will hear testimony, will speak 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 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. When such a showing of interest is made, then the amendment would require the employer to disclose to the union certain information about the employees. This disclosure would be exclusive to the 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 in section 1, teachers in section 2, section 3 covers municipal employees, including all school support staff who are not licensed teachers, and section 4 covers early care educators. In other words, all

public employees, public employers, and unions representing public employees would be treated equally.

Section 5 and section 6 amend the state employees and state judiciary employees laws, respectively, by allowing those state employees who are members of a union to enjoy an unfettered right to have their voluntary union dues to be deducted from their paychecks upon a valid authorization for such a deduction. Likewise, sections 7 (teachers), 8 (home care workers), 9 (municipal employees, including school support staff), and 10 (early care educators) allow for the same voluntary deduction rights for all public employees. 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 amendment contained in S.254 will maintain the labor peace that the *Abood* court tried to establish and did so for 41 years. The *Janus* case upset the balance, and S.254 will reestablish the delicate balance between protecting an employee's right not to join a union but also giving union members and unions certain rights because they, respectively, elect to join a union and because the union is certified as the exclusive bargaining agent for all employees in the bargaining unit.

Once again, others will address other sections of the bill, but I am happy to answer any questions. Thank you for your support of S.254.