



**Are these “free speech dollars” taken from the employee’s paycheck presumptively the employee’s, or presumptively the union’s?**

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# TESTIMONY

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## IN SUPPORT OF WORKERS’ FREE SPEECH RIGHTS

*By Patrick Ishmael*

*Testimony Before The Missouri House Workforce Development  
and Workplace Safety Committee*

### **To the Honorable Members of This Committee:**

Ladies and gentlemen, thank you for the opportunity to testify today. My name is Patrick Ishmael and I am a policy analyst for the Show-Me Institute, a nonprofit, nonpartisan Missouri-based think tank that supports free-market solutions for state policy. The ideas presented here are my own. This testimony is intended to describe my views on free speech rights within the context of the public union dues question.

Last year, I wrote about an important free speech case that the U.S. Supreme Court had just handed down. *Knox v. Service Employees International Union* dealt with the manner in which unions could automatically deduct dues from public employee salaries and apply those dollars toward the union’s political purposes. *Knox* dealt with a narrow fact pattern, so extrapolations of the Court’s findings to future fact patterns will not be perfect, especially given the status of the case law.

Yet the substantive question addressed in the Court’s opinion I think really boils down to this: should the burden be on a public employee to opt-out of an automatic salary deduction program whose proceeds could fund a union’s political activities? Or should the burden be on the union to get employees to opt-in? Are these “free speech dollars” taken from the employee’s paycheck presumptively the employee’s, or presumptively the union’s?

It appears the Court sees those dollars as presumptively the employee’s. Justice Samuel Alito, writing for a 7-2 majority, articulated the problem inherent in these opt-out arrangements very clearly:

Unless it is possible to determine in advance with some degree of accuracy the percentage of union funds that will be used during an upcoming year for chargeable purposes — and the SEIU argues that this is not possible—there is at least a risk that, at the end of the year, unconsenting nonmembers will have paid either

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**Let employees donate to political causes as they see fit — and let unions compete for those dollars like everyone else.**

too much or too little. Which side should bear this risk?

The answer is obvious: the side whose constitutional rights are not at stake.

Protecting the First Amendment rights of all of Missouri's citizens is an issue that should always be of great import to the legislature. Allowing public employees to specifically opt-in, rather than opt-out, to support a union's political activities would reaffirm this purpose.

More generally, public-sector unions pose a different set of fiscal and philosophical problems that private-sector unions do not, and those problems are related to the speech issues in play here. Public-sector unions can oftentimes choose in practice who will be across the table when they negotiate their contracts. Their political activism and power allows them to negotiate sweetheart deals that private-sector employees could never obtain, and taxpayers end up picking up the bills for those deals.

That is one of the reasons Missouri's pension obligations are so foreboding. Private-sector unions are (usually) circumscribed in their negotiating power by the health of the companies with which they work. Public-sector unions are not as constrained and can simply work to get representatives — on school boards, in fire districts, and elsewhere — that will generously spend other peoples' money on them. That power is in no small part underwritten by the unions' ability to directly draw money from employee salaries

and, I believe, in violation of the free speech rights of many public employees.

Thus, on both free speech and fiscal grounds, it is eminently appropriate that the Missouri Legislature would step in and reassert that public-sector union power has limits. High among those limits is the First Amendment rights of those the state employs. Employees who want to donate to the union's political activities should be able to donate to them as they would choose to donate to any other organization, but the state should presume that those speech dollars are the employee's first, not the union's.

A *Knox*-informed reform that would reassert the rights of public employees would be a modest one, but it would effectively hit at the larger problem of the special deals that public-sector unions get which private-sector unions and the non-unionized could never leverage. Such a change would be a positive step for the state and its employees, both fiscally and constitutionally. Let employees donate to political causes as they see fit — and let unions compete for those dollars like everyone else.

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