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July 30, 2021

Mr. David Osborne
Americans for Fair Treatment
225 State Street, Suite 301
Harrisburg, Pennsylvania 17101

Re: Unionization of Local Government Employees under Virginia Code Section 40.1-57.2

Dear Mr. Osborne:

The Commonwealth of Virginia has gone "all-in" to empower organized labor by authorizing cities, counties, towns, and other local government employers to recognize and bargain with union officials over public employees' employment and service. Revisions to Virginia Code Section 40.1-57.2 became effective on May 1, 2021, reversing decades-old state law that prohibited unionization of local government employees. The consequences for the public treasury, delivery of services, and individual employees' rights will be significant. Localities face a daunting, new financial obligation to expend local-government treasury funds first to measure the gravity of the state mandate and determine their response, and then to develop, fund, and act on labor-relations decisions without a source of new dollars (which the General Assembly and Governor Ralph Northam did not provide).

Local governing bodies in Virginia are grappling with how to comply with the state mandate and, at the same time, serve the interests of taxpayers, consumers of government services, and individual employees. This letter may help you as you work with localities' decision-makers. It provides a summary of: 1) the Virginia statute mandating collective bargaining for local government employees and important legal issues arising from it; 2) implications for consumers of local government services and localities' decision-makers; 3) consequences for individual employees' rights; and 4) some local governments' options for balancing compliance with the state mandate with other possible policy objectives, including maintenance of a union-free environment and establishing a labor-relations framework.

Virginia Law Imposes the Unionization Decision on Localities.

For decades, Virginia Code Section 40.1-57.2 expressly denied to the state, as well as counties, municipalities, and towns in the Commonwealth, any authority to recognize a labor union as a bargaining agent of public employees, to bargain collectively, or to enter into any collective bargaining agreement with respect to public employees' employment or service. In 2020, however, without committee investigation or public comment, the General Assembly and Governor Northam reversed course, amending the statute and effectively eliminating the non-union rule for localities. The revised Code section authorizes counties, cities, and towns, by local ordinance or resolution, to recognize labor unions as the bargaining agents of public employees and to enter into collective bargaining agreements with respect to any matter relating to their employment or service.[i]

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On the surface, the statute frames the bargaining decision as an option for localities. If a local governing body proactively adopts an ordinance or resolution under the statute, it must also adopt procedures for certifying unions as bargaining agents:

> Any such ordinance or resolution shall provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit. As used in this section, "county, city, or town" includes any local school board, and "public officers or employees" includes employees of a local school board.[ii]

This option could be considered a "front door" of sorts for union organizers to enter the public-sector workplace and to compel recognition.

The Statute Effectively Demands that Localities Develop Labor-Relations Strategies.

The statute offers an ostensible choice between dealing with a union or not, but the offer is really one that localities cannot refuse. If a local governing body does not affirmatively authorize recognition of and bargaining with unions, it will leave open another option for union organizers, a "back door" of sorts to force the local government to consider recognizing the union and engaging in bargaining.[iii] Specifically, if a union demanding representation in a locality that has not adopted a bargaining ordinance or resolution claims "certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining," then the governing body shall "take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body."[iv] The governing body's mandated vote is required within 120 days of receiving notification of the claim of majority status. As a result, a local governing body that has not adopted a bargaining ordinance under Section 40.1-57.2.A. may be required to entertain attempts, possibly even repeated attempts, to unionize public employees.

Local governing bodies would be wise to develop labor-relations strategies sooner rather than later. Some may consider but resolve not to adopt collective bargaining. Some may enact comprehensive procedures for certification and decertification of unions, bargaining, resolution of disputes, and protections for individual employees, among other provisions. Others may instead wait and see whether a specific union will attempt to enter through the back door and then respond.

Local government decision-makers intent on serving the interests of the public and public employees, as opposed to union officials, may consider various strategies for staying union-free. The Clarke County Board of Supervisors, for example, adopted a broad resolution prohibiting the County Administrator and employees of the County from recognizing or bargaining with union officials.[v] Other local governing bodies skeptical of the state policy facilitating unionization of public employees could proactively enact ordinances or adopt resolutions that are as restrictive as appropriate from a labor-relations perspective but that also give effect to policy preferences that are decidedly pro-taxpayer and pro-employee and conversely anti-union. For example, a local governing body could adopt a bargaining scheme that includes rigorous limitations on the subjects of bargaining. Ordinances could also include enhanced protections for individual public employees against union overreach or abuse as a means of limiting any opening union officials may obtain in

any ordinance. Some combination of these approaches is also conceivable. The appropriateness of any strategy will depend on the circumstances present in the relevant locality at the relevant time.

The Consequences of Public-Sector Monopoly Bargaining are Real.

Experience in other states that have enacted public-sector bargaining schemes suggests that union officials' political power, which is substantial both nationally and in the Commonwealth, will dramatically influence public officials to accept union officials' demands.[vi] The effects may be detrimental. In public education, for example, a mountain of evidence exists to establish that compulsory unionism hurts schoolchildren, parents, and taxpayers as well as teachers. University of Texas at Dallas economics professor Stan J. Liebowitz and research fellow Matthew L. Kelly found that "union strength . . . has a substantial and statistically significant negative relationship with student achievement."[vii] Their research included analysis of union strength and student test performance in the states, and they scored states based in part on student test performance. They examined states' relative rankings on a range of metrics and the consequences of a shift in union strength in public schools. They concluded:

> [A] state [going] from having the weakest unions to the strongest unions . . . would move a state down about 45 percent of the way through this total range, or equivalently, alter the rank of the state by about 23 positions. This is a dramatic result. . . . This negative relationship suggests an obvious interpretation. It is well known that teachers' unions aim to increase wages for their members, which may increase student performance if higher quality teachers are drawn to the higher salaries. Such a hypothesis is inconsistent with the finding here, which is instead consistent with the view that unions are negatively related to student performance, presumably by opposing the removal of underperforming teachers, opposing merit-based pay, or because of union work rules.[viii]

University of Chicago law professor John Lott and University of Florida economist Lawrence Kenny also proved what many parents and students know from their own experiences: students learn less in states with stronger teachers' unions.[ix] Lott and Kenny looked at standardized tests taken by fourth- and eighth-graders in reading and math and found that, regardless of the subject or grade level and regardless of whether they focused on absolute scores or improvement between fourth and eighth grade, "an increase in teacher union dues and expenditures leads to lower student test scores."[x] Based on their research, they concluded:

> [S]tate-wide teachers' unions are often successful in influencing state regulations on education by being the major contributors to candidates for the state legislature. The state-wide teachers' unions that contribute more are expected to exercise more influence and thus be stronger unions. We . . . find that students in states in which the teachers' union has high dues and high spending have lower test scores than students in states with low dues and spending. Union strength matters and indeed matters more than any other variable in our regressions.[xi]

Monopoly bargaining power in the hands of teacher union bosses results in a variety of ills that continuously challenge public education. For example, union officials routinely wield their

legally-mandated bargaining power to perpetuate “single salary” schedules that frequently are a bad deal for teachers.[xii] Teachers qualified for hard-to-fill positions in subject areas such as calculus, chemistry, and English as a second language suffer with below-market pay caused by rigid union salary schedules.[xiii] Many other educators with exceptional skills or with low seniority suffer the same fate.[xiv] Similarly, teacher union officials are generally unrelenting in demands for small class sizes because smaller class sizes typically mean more teacher hiring, which drives up teacher union membership and dues receipts. The problem for schools, students, and parents is that the empirical evidence largely fails to find that smaller student-teacher ratios and class size improve student performance.[xv] Other priorities of union officials at the bargaining table include rules against firing teachers that are so extreme that some school systems have to warehouse hundreds of teachers who cannot be trusted in the classroom.[xvi]

The effects of enhanced union power are not limited to the schools. Union featherbedding, pension padding, and other costly schemes deprive local government decision-makers of scarce resources across the board, resulting in state and local government insolvency.[xvii] Union contracts can significantly diminish the range of methods that local governments employ to deliver services to the public, including private contractors and flexible staffing arrangements.[xviii] Some commentators also have tied police officers’ abuse of power, including excessive force against racial minorities, to police unions empowered by public-sector bargaining laws.[xix]

Public-Sector Monopoly Bargaining Means Higher Costs.

The Virginia bargaining law provides for little or no protection of the interests of the taxpayers, consumers, and the local governing body, and experience in other jurisdictions that have granted monopoly bargaining privileges to union officials indicates significant negative fiscal consequences. As a starting point, local governing bodies may be required to incur substantial litigation expense relating to ordinances and resolutions providing for union recognition and bargaining, and legal fees can be substantial.[xx] For example, in *Knox v. Chiang*, the court imposed joint and several liability on the state of California and the SEIU for public employees’ attorney’s fees and costs arising from their successful challenge to a deal between the state and the union which forced public employees to pay fees as a condition of employment.[xxi] The award was for $1,021,176.00 in attorney’s fees and $15,412.93 in expenses, which were separate from the state’s own legal fees and expenses.[xxii]

Putting aside the costs of defending against legal challenges, administrative costs alone will be substantial. Local governments already have a difficult time meeting current demands, and funding a new labor-relations bureaucracy may only further strain existing resources. Collective bargaining is expensive, and, in enacting the Virginia law, the General Assembly and Governor Ralph Northam did not provide any funding to offset the inevitable costs. For example, as of 2019, Montgomery County, Maryland, which borders Virginia, had seven attorneys just to manage the county’s labor relations under its bargaining regime.[xxiii] The City of Alexandria, Virginia, has estimated that it will spend between $500,000 and $1 million for new labor-relations personnel and increases in hours of current personnel to administer the city’s ordinance.[xxiv] To pay administrative costs related to collective bargaining, Arlington County adopted a budget for fiscal year 2022 that included $350,000 for outside legal services and new positions in the County Manager’s Office (“CMO”) and the Human Resources Department (“HRD”).[xxv] The Arlington County Attorney and County Manager anticipate that “substantial additional resources will be needed in future years in

the County Attorney's Office, the Department of Management and Finance, CMO and HRD, as well as operating departments to implement collective bargaining."[xxvi]

Apart from heavy administrative and legal expense, localities engaging in bargaining can expect substantial cost increases as a result of meeting union demands at the negotiating table or in arbitration hearings.[xxvii] California Polytechnic State University Economics Professor Michael L. Marlow and Alexis de Tocqueville Institution scholar William Orzechowski found:

> On the supply side, unions adversely affect productivity and raise costs of providing goods through the public sector. The prediction that public sector unions exert a positive influence on public spending is strongly supported by our empirical analysis of the relationship between union membership and spending of state and local governments.[xxviii]

In addition to higher costs resulting from litigation, administration, and collective bargaining agreements themselves, public-sector collective bargaining has been found to increase tax burdens by $2,300 to $2,900 per family of four, and local governments have offset high bargaining costs by cutting employees from the employment rolls.[xxix] Higher tax burdens can impose greater strain on the tax base, which can lead to taxpayers fleeing unionized jurisdictions in favor of lower-tax, union-free jurisdictions.[xxx]

Local Governing Bodies Should Plan to Protect Employees.

Local government decision-makers will first have to decide how they will respond to the state's mandate and whether they will work to stay union-free. Employers that actively educate employees about labor relations and why a union is not in their best interests generally are more likely to stay union-free. While the state bargaining statute mandates much, it does not proscribe local government officials' freedom to speak openly to their employees about how self-interested union officials may harm employees' interests. Section 40.1-57.2 consists of a total of seven sentences, and its brevity and vagueness leaves open many questions for which employees, policymakers, and others are likely to need answers.

Missing, for example, is any protection against union manipulation of employees and abuse of process to obtain what the statute calls the "certification from a majority of employees." Notably, the statute does not specify what the "certification" must certify, including whether the certification must even be that a majority of public employees actually want the union to become their exclusive representative. The Virginia law also leaves union officials to their own devices to select the basis on which they will present a claim that a majority of employees actually supports the union as an exclusive representative. Union officials' abuse of authorization cards to gloss over whether a majority of employees in an appropriate unit wants the union in the workplace is well-established.[xxxi] Some organizers mislead employees to get them to sign cards. Some outright lie. Some pester or intimidate employees until they relent and sign a card to end the coercion. The Virginia law offers no protection or checks against such coercion.

In organizing campaigns, union organizers also obscure the fact that union authorization cards routinely have significant legal consequences. Organizers often tell workers unfamiliar with labor law that the card or petition that they are imploring the workers to sign commits the workers to nothing.[xxxii] Similarly, SEIU Virginia 512 in Fairfax, Virginia, is pressing for public employees

to sign or click a form that gives up substantial legal rights.[xxxiii] Specifically, the SEIU 512 card signs employees up as members, subjects them to all the rules in both the international union's and local union's constitutions and bylaws, and restricts how employees may resign from the union.[xxxiv] SEIU's card also authorizes deduction of $10-per-pay-period dues from paychecks, automatically renews the deduction authorization from year to year, and restricts revocation of dues authorizations to a narrow 15-day window period that comes around only every twelve months or upon expiration of a collective bargaining agreement.[xxxv] The union organizer commonly fails to explain to employees legal restrictions on the right to escape the union if and when employees realize later that the union organizer misled them.

The Virginia bargaining statute provides no right to refrain from union activity or other employee protection, and this deficiency may lead to First Amendment-based challenges to the statute and ordinances and resolutions at the local level. Alexandria's and Arlington's ordinances provide to employees the right to refrain from union activities but imposes on the local governments substantial costs for inadequacies with respect to employee rights.[xxxvi] The Alexandria and Arlington ordinances, including the substantial restrictions of employees' right to revoke authorizations for dues deductions for periods as long as one year, are subject to constitutional scrutiny.[xxxvii] The costs of litigation arising from constitutional and other legal issues could be substantial.

Union organizers also typically fail to advise workers of the consequences of accepting internal union rules that permit the union to impose fines and other discipline against workers. The AFSCME 2020 Constitution and Bylaws, for example, permits any union member to file charges against "any individual for actions while a member of the Federation or a subordinate body . . ." including for "[a]cting in collusion with management to the detriment of the welfare of the union or its membership" and "refusal or deliberate failure to carry out legally authorized decisions" of union officials.[xxxviii] Local government decision-makers and workers alike properly may question how a union that outlaws cooperation with management and other legitimate employee conduct can be in their best interests.

Localities Should Plan How They Will Comply With the State Statute.

Again, governing bodies will need to decide whether to enact an ordinance or resolution providing for a certification and decertification process, i.e., a "front door" process, or instead to wait passively for union organizers to choose when they will use the "back door" to compel a vote on whether the locality will recognize and bargain with the union. The front-door approach is proactive and may permit localities more procedural control and an ability to protect public employees and the localities themselves.

To comply with the statute, local governing bodies skeptical of the state policy facilitating bargaining could proactively enact ordinances or adopt resolutions that are as restrictive in authorizing bargaining as appropriate but that also give effect to other policy preferences that are decidedly pro-taxpayer and pro-employee and conversely anti-union. For example, localities could enact strict safeguards to protect employees from manipulation during the organizing process. Other protections could include re-certification requirements to prevent bargaining representatives from perpetuating their monopoly status without any consent from employees hired after an initial certification; informed-consent requirements during card signing and other means of validating employees' support of or opposition to unionization; and requirements for unconditional

revocation of dues-deduction authorizations. Some localities may find a need for rigorous limitations on the subjects of bargaining to prevent intrusion into public policy matters unrelated to terms of employment. Requiring super-majorities or even unanimous support as means of protecting individual employee rights and constituents' interests may also be considered. Similarly, some localities may limit the frequency of certification claims.

The back-door approach, on the other hand, may permit a governing body to put off difficult issues in the short term, albeit with significantly less certainty as to their resolution when the issues ultimately arise. Delay, however, imposes a risk that the locality will lose control over the process and cede even more power to union officials over the long run. Some governing bodies may follow Clarke County's Board of Supervisors, which resolved to prohibit the local government from engaging in collective bargaining and effectively deferred issues about whether the resolution will be effective to preclude any union's future certification claim.[xxxix]

In any event, to avoid losing ground to union officials, local government policymakers will have to catch up to veteran public-sector union organizers who have been engaged in public-sector bargaining for many decades. Governing bodies will have to answer substantial policy questions left open by the brief state statute. Many issues relate to the scope of bargaining, including what can be negotiated and on whose behalf. The statute gives union officials initial, unilateral control over the scope of the bargaining unit sought in "back-door" demands for recognition under Section 40.1-57.2.C., including the power initially to specify the job classifications, departments, and locations that are included and excluded from the unit.[xl]

The statute's bargaining mandate also has no meaningful limitations on the scope of subjects about which the locality will be required to bargain, which means that union officials have a license to demand bargaining on matters on which localities will be loath to negotiate. The statute's cession of government sovereignty to unelected union officials and facilitation of unions' control over critical aspects of policing, fire protection, education, and public utility services is significant. The scope of bargaining authorized in Virginia Code Section 40.1-57.2 includes "any matter relating to [any public officers or employees] or their employment or service . . . ." The reference to "service," as something distinct from "public officers or employees" and "their employment," may suggest authorization of local governments to provide for bargaining over the local government's services themselves. As a result, localities considering adopting a bargaining scheme will need to consider carefully the subjects about which they will bargain and, conversely, those which they will preserve for their own unilateral determination.

Unions routinely demand to bargain about matters that are customarily vested within management's rights, and the Virginia statute's potentially unlimited scope of negotiable issues could have dramatic results for local governments endeavoring to deliver services consistent with consumers' requirements, as opposed to those of unelected union officials. Union officials in the public sector routinely prioritize their demands for privileges for union officials such as withholding of union dues from employees' paychecks and government-paid time in service of the union. Other issues include whether bargaining will be limited to meeting and conferring without further obligation, how bargaining impasses are to be resolved, whether the local government will have ultimate authority to impose its terms after conferring with a union, and any process for the resolution of disputes under any collective bargaining agreement.[xli]

Whether taking the front-door approach or the back-door approach, or some other variation, local governing bodies' decisions must be made so that public officials can do their best to confront the cascade of issues and to protect the citizens they are elected or hired to serve. If you have or any local government decision-maker has any question about the implications of the state's unionization authorization, please feel free to contact me.[xlii]

Sincerely,

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[i] VA. CODE § 40.1-57.2 (2021) (hereinafter referred to as the "Virginia law" or the "Virginia statute").
[ii] § 40.1-57.2.A.
[iii] § 40.1-57.2.C.
[iv] *See* § 40.1-57.2.C. (mandating local governing body vote within 120 days of union claim of majority status "*[f]or any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining*") (emphasis supplied).
[v] Clarke County, Va., Collective Bargaining Resolution 2021-09R (June 15, 2021) (located on p. 78 at https://www.clarkecounty.gov/home/showpublisheddocument/7769/637589133553188807). Section 40.1-57.2's framework, which effectively requires that local governing bodies either adopt authorizations for unionization and bargaining or, alternatively, wait and see whether a specific union will attempt to enter through the back door, does not specifically provide for localities to respond other than as prescribed in the statute. Adoption of a resolution once, by which the governing body indefinitely establishes its intent to deprive local government officials of any authority to recognize a union and to bargain collectively, may provide various practical advantages to a local governing body, including in efforts to deny a toehold in the workplace to union organizers and to support defenses against any legal action by unions. At this early date, no case law exists on whether a local governing body that merely resolves *not to bargain* generally, as opposed to in response to a specific certification claim involving a specific unit of employees, is a "governing body of a county, city, or town that has not adopted an ordinance or resolution *providing for bargaining*" and is therefore still vulnerable to a union recognition demand via the "back door." *See* § 40.1-57.2.C. (emphasis supplied).
[vi] G. GREGORY MOO, POWER GRAB - HOW THE NATIONAL EDUCATION ASSOCIATION IS BETRAYING OUR CHILDREN 112-13 (Regnery 1999).
[vii] Stan J. Liebowitz & Michael L. Kelly, *Fixing Bias in Current State K-12 Education Rankings*, Policy Analysis No. 854, 12 (Nov. 13, 2018), https://www.cato.org/sites/cato.org/files/pubs/pdf/pa-854-updated.pdf.
[viii] *Id.*
[ix] Johnathan Lott & Lawrence W. Kenny, *State teacher union strength and student achievement*, 35 ECON. OF EDUC. REV. 93-103 (2013).
[x] *Id.* at 102.
[xi] *Id.*
[xii] Nat'l Ed. Ass'n, 2019 Handbook 281 available at http://www.useaut.org/assets/docs/2019_NEA_Handbook.pdf.

[xiii] Stan Greer, *How Monopolistic Teacher Unionism is Undercutting Math and Science Education*, NAT'L INST. FOR LAB. REL. RSCH., INC. (Nov. 29, 2017), https://nilrr.org/2007/11/29/how-monopolistic-teacher-unionism-undercutting-math-and-science-education/.
[xiv] *Id.*
[xv] Stan J. Liebowitz & Michael L. Kelly, *Fixing Bias in Current State K-12 Education Rankings*, Policy Analysis No. 854, 13 (Nov. 13, 2018), https://www.cato.org/sites/cato.org/files/pubs/pdf/pa-854-updated.pdf; MALLORY FACTOR & ELIZABETH FACTOR, SHADOWBOSSES – GOVERNMENT UNIONS CONTROL AMERICA AND ROB TAXPAYERS BLIND 140-41 (Center Street 2012) ("Out of 112 studies researching the impact of class size on student performance, 103 studies concluded that smaller class size did not improve student performance at all.").
[xvi] Karen Matthews, *700 NYC teachers paid to do nothing,* ASSOCIATED PRESS (June 22, 2009), https://www.nbcnews.com/id/wbna31494936.
[xvii] FACTOR & FACTOR, *supra* note xv, at 140-41.
[xviii] *See, e.g.*, *AFSCME, How to Prevent Privatization: An Activist's Guide*, https://afscmeatwork.org/system/files/howtopreventprivatization-2013_0.pdf (encouraging union members to "Go[] on the [o]ffensive" to prevent public employers from using private contractors); Daniel DiSalvo, *The Trouble with Public Sector Unions*, NATIONAL AFFAIRS (2010), https://www.nationalaffairs.com/publications/detail/the-trouble-with-public-sector-unions (explaining how public-sector unions distort the quality of public services).
[xix] Farah Stockman, *The County Where Cops Call the Shots*, N.Y. TIMES (Mar. 26, 2021), https://www.nytimes.com/2021/03/26/opinion/police-suffolk-county-unions.html.
[xx] *See, e.g., Knox v. Chiang,* No. 2:05-CV-02198-MCE, 2013 WL 2434606, at *15 (E.D. Cal. June 5, 2013) (awarding public-employee plaintiffs $1,021,176 in attorney's fees and $15,412.93 in costs); *see also Tierney v. City of Toledo*, No. C 83-430, 1988 WL 167240, at *13 (N.D. Ohio Aug. 23, 1988) (awarding public-employee plaintiffs $59,170.97 in attorney's fees jointly and severally from city and union).
[xxi] *Knox*, 2013 WL 2434606, at *15.
[xxii] *Id.*
[xxiii] Office of the County Attorney Agency Assignments February 7, 2019, https://www.montgomerycountymd.gov/cat/resources/files/agency_assign.pdf.
[xxiv] Mark B. Jinks, Memorandum, *Introduction and First Reading. Consideration. Passage on First Reading of an Ordinance to amend Title 2 of the Code of the City of Alexandria, Virginia, General Government, Chapter 5, Officers and Employees, by adding Article E, Collective Bargaining*, (Mar. 3, 2021), https://alexandria.legistar.com/LegislationDetail.aspx?ID=4816310&GUID=6C1A53F8-BED4-4B81-8B48-4B680D688F27&Options=ID%7CText%7C&Search=1; *see also* Mark B. Jinks, Memorandum, *Public Hearing, Second Reading and Final Passage of an Ordinance to amend Title 2 of the Code of the City of Alexandria, Virginia, General Government, Chapter 5, Officers and Employees, by adding Article E, Collective Bargaining.*, (Apr. 12, 2021), https://alexandria.legistar.com/LegislationDetail.aspx?ID=4910340&GUID=B7F6740A-1D80-4383-AD70-535F4A4ED3F1&Options=ID%7CText%7C&Search=21-0960&FullText=1.
[xxv] Arlington County, Va., County Board Agenda Item Meeting of July 17, 2021 (July 13, 2021), https://arlington.granicus.com/MetaViewer.php?view_id=2&event_id=1660&meta_id=204481 ("Loudoun County preliminarily estimated (in November 2020) that it would need $1.4 million and 12 positions.").
[xxvi] *Id.*
[xxvii] Michael L. Marlow & William Orzechowski, *Public Sector Unions and Public Spending*, 89 PUBLIC CHOICE 1 (Sept. 16, 1996), https://doi.org/10.1007/BF00114274 ("[A] strong positive correlation has been shown between per capita state debt and the scope of collective bargaining statutes. [Citation omitted.] In states with no collective bargaining statutes, average per capita state debt was $916; but, in states where all public sector employees are covered by such statutes, average per capita state debt was 250 percent higher, or $2,264 per resident. . . .").
[xxviii] *Id.* at 14.
[xxix] Geoffrey Lawrence et al., *How Government Unions Affect State and Local Finances: An Empirical 50-State Review*, HERITAGE FOUNDATION (Apr. 11, 2016), https://www.heritage.org/jobs-and-labor/report/how-government-unions-affect-state-and-local-finances-empirical-50-state.
[xxx] Stan Greer, *Working-Age People 'Are Leaving' Big Labor Stronghold States 'in Droves,'* NAT'L INST. FOR LAB. REL. RSCH., INC. (Dec. 13, 2016), https://nilrr.org/working-age-people-are-leaving-big-labor-stronghold-states-in-droves/ (explaining how high taxes and a lack of economic opportunities are leading to an "exodus" of people leaving union stronghold states).
[xxxi] *See Dana Corp.*, 351 NLRB 434, 438-39 (2007) ("For a number of reasons, authorization cards are admittedly inferior to the election process. First, unlike votes cast in privacy by secret Board election ballots, card signings are

public actions, susceptible to group pressure exerted at the moment of choice. The election is held under the watchful eye of a neutral Board agent and observers from the parties. A card signing has none of these protections. There is good reason to question whether card signings in such circumstances accurately reflect employees' true choice concerning union representation. Workers sometimes sign union authorization cards not because they intend to vote for the union in the election but to avoid offending the person who asks them to sign, often a fellow worker, or simply to get the person off their back, since signing commits the worker to nothing (except that if enough workers sign, the employer may decide to recognize the union without an election). Second, union card-solicitation campaigns have been accompanied by misinformation or a lack of information about employees' representational options. As to the former, misrepresentations about the purpose for which the card will be used may go unchecked in the voluntary recognition process. Even if no misrepresentations are made, employees may not have the same degree of information about the pros and cons of unionization that they would in a contested Board election, particularly if an employer has pledged neutrality during the card solicitation process. Employees uninterested in, or opposed to, union representation may not even understand the consequences of voluntary recognition until after it has been extended. In circumstances where recognition is preceded by a card-check agreement that provides for union access to the employer's facility, employees may even reasonably conclude they have no real choice but to accede to representation by that union. Third, like a political election, a Board election presents a clear picture of employee voter preference at a single moment. On the other hand, card signings take place over a protracted period of time. In the present *Metaldyne* cases, for instance, the Union took over a year to collect the cards supporting its claim of majority support. During such an extended period, employees can and do change their minds about union representation.") (internal quotation marks and citations omitted).
[xxxii] *Id.*
[xxxiii] *See, e.g.,* SEIU Virginia 512, Fairfax: Membership & Dues Deduction, https://secure.everyaction.com/jKEMSbWKAUS4dYLU0ne8Jw2 (combining into one form various legal obligations imposed on employees, including a request for and acceptance of membership in union, obligation to comply with union's constitutions and by-laws, authorization of union to act as employee's exclusive representative in bargaining over terms and conditions of employment, requirement that any resignation notice be sent via U.S. Mail, registration for union communications via automated calls and text messages, authorizing paycheck withholdings of dues "currently $10 per pay period" but subject to change, automatic renewal of dues deduction authorization even in cases of resignation from union, and restrictions on revocation of dues authorization to window periods of "15 days before or after (1) the annual anniversary date of this agreement or (2) the termination of the applicable collective bargaining agreement between my employer and union").
[xxxiv] *Id.*
[xxxv] *Id.*
[xxxvi] Alexandria, Va., Ordinance 5336, § 2-5-69 (Apr. 17, 2021); ARLINGTON COUNTY, VA., CODE § 6-30(c) (2021).
[xxxvii] Ordinance 5336, § 2-5-77; CODE § 6-30(K)(5).
[xxxviii] AFSCME International Constitution 2020, Art. X, Judicial Procedure, § 1, https://www.afscme.org/about/governance/AFSCME-International-Constitution.pdf.
[xxxix] Collective Bargaining Resolution 2021-09R (located on p. 78 at https://www.clarkecounty.gov/home/showpublisheddocument/7769/637589133553188807).
[xl] Virginia Code Section 40.1-57.2 authorizes the local governing body to include in the unit "any other public employees deemed appropriate by the governing body," but such authority to add job classifications appears to be a one-way street. The local government may have the power to alter the unit only in the context of adopting or not adopting "an ordinance or resolution *to provide for collective bargaining* . . ." which may invite the argument that the authority to alter the union's preferred unit is contingent upon the local governing body's willingness to bargain collectively. *See* § 40.1-57.2.C. Notably, the statute does not provide authority to the locality to *prohibit* collective bargaining "for any other public employees deemed appropriate by the governing body." *Id.*
[xli] The General Assembly also amended Virginia Code § 40.1-55 to provide that that section's provision for termination of the employment of employees of the Commonwealth or of any county, city, town, or other political subdivision thereof who strikes "shall apply to any employee of any county, city, or town or local school board without regard to any local ordinance or resolution adopted pursuant to § 40.1–57.2 by such county, city, or town or school board that authorizes its employees to engage in collective bargaining."
[xlii] The information contained herein is provided for informational purposes only and should not be construed as legal advice on any subject matter. This letter is not intended to be a substitute for legal counsel. No one should act or refrain from acting on the basis of any content included herein but should instead seek appropriate legal advice on the particular facts and circumstances at issue from a properly licensed attorney.