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

Re: How Virginia's Unionization Law Affects Local Government Employees

Dear Mr. Osborne:

The Commonwealth of Virginia has gone “all-in” to empower organized labor by providing to union officials monopoly power over the employees of cities, counties, towns, and other local governmental entities. Revisions to Virginia Code Section 40.1-57.2ⁱ, which became effective on May 1, 2021, reversed decades-old state law that protected state and local government employees from unionization. The consequences for individual employees will be significant.

Union organizers are working to capitalize on the special privileges the Virginia law grants to them. They intend to use the law to add millions of dollars in employee-paid union dues to union treasuries, and public employees are being confronted with organizers' demands. This letter may help you as you work with employees to better understand important aspects of labor law so that they can decide for themselves whether a union is in their best interests. It summarizes: 1) the Virginia statutory mandate for collective bargaining for local government employees; 2) important consequences for individual employees; and 3) options for employees as they face the prospect of unionization in their workplaces.

Unions Are Big Businesses That Require Workers' Dues, Fees, and Fines.

Unions that are intent on unionizing local government employees spend billions of dollars every year, and their expenditures cover the full range of items typical of large businesses. Unions such as the National Education Association (“NEA”) teachers union, the American Federation of State, County and Municipal Employees (“AFSCME”) union, the Service Employees International Union (“SEIU”), the International Association of Fire Fighters (“IAFF”), and the Fraternal Order of Police (“FOP”) are targeting public employees in Virginia. Their reports to the United States Department of Labor (“DOL”) reveal huge assets and large amounts of cash spent on all kinds of expenses:

*Table 1 - Select Expenses from Select Government Unions'
2020 Annual Reports to United States Department of Laborⁱⁱ*

Union Expenses	AFSCME	NEA	SEIU	IAFF	FOP
Total Assets	\$314,149,826	\$442,934,831	\$444,756,627	\$36,117,443	\$13,626,094
Total Disbursements	\$174,267,664	\$649,775,500	\$310,185,701	\$70,126,435	\$7,332,652
Political activities and lobbying	\$62,111,608	\$50,728,949	\$60,055,717	\$10,159,128	\$447,627
Contributions, gifts, and grants	\$2,866,201	\$119,663,657	\$2,876,573	\$595,177	\$380,306
General overhead	\$21,952,691	\$59,788,568	\$34,242,823	\$21,680,746	\$1,346,614
Benefits for union officials, personnel	\$21,644,022	\$51,464,947	\$19,398,324	\$14,213,476	\$224,345
Withholding Taxes, Payroll Deductions	\$17,274,178	\$27,387,571	\$13,127,064	\$4,176,665	\$695,328
Purchase of Investments, Fixed Assets	\$3,419,038	\$285,728,381	\$43,256,444	\$400,000	\$112,487
Total Disbursements to Officers	\$1,244,031	\$2,967,189	\$1,765,654	\$3,324,120	\$757,355
Total Disbursements to Union President	\$357,087	\$416,568	\$279,126	\$383,098	\$107,291
Total Disbursements to Union Secy-Treas.	\$298,300	\$396,651	\$245,775	\$336,615	\$64,049

The unions' financial reports are publicly available, and the billions of dollars accounted for demonstrate that local government unionism is big business. Like any business operators, of course, the union officials have to find a way to pay for all their expenses, and for the most part, that means union dues, fees, fines, and assessments paid by rank-and-file government employees. The amounts are enormous:

*Table 2 - Select Receipts and Dues Items from Select Government Unions'
2020 Annual Reports to United States Department of Laborⁱⁱⁱ*

Union Receipts	AFSCME	NEA	SEIU Local 32BJ	IAFF	FOP Lodge 1
Per Capita Tax/Dues	\$183,486,124	\$374,992,112	\$97,656,218	\$54,418,069	\$546,020
Fees, Fines, Assessments, Work Permits	\$1,137,081	\$0	\$755,146	\$235,818	\$0
Total Receipts	\$198,209,975	\$603,332,048	\$114,759,759	\$77,456,678	\$802,667
Maximum Regular Dues/Fees	2% of pay	\$196/year	\$79.08/month	\$14.84/month	\$20/bi-weekly

Employees faced with union organizers demanding that they sign a union card or click on a union website can examine the financials of the unions who are targeting them. If the union officials do not volunteer the full financial reports to the employees, then the employees can insist that the union produce them. If the union fails to do so, employees can go to the Department of Labor's website (<https://olmsapps.dol.gov/query/getOrgQry.do>) and obtain the reports themselves. Employees deserve to know all the details about the union that is trying to obtain monopoly

control over bargaining the terms of employment. If the union does not volunteer that information, employees have appropriate cause to question what the union is trying to hide.

Union officials are notorious for signing employees up for dues deductions and then refusing to stop the dues withholdings if employees change their minds.^{iv} Other critical inquiries employees can make to union organizers include:

- How much will union dues be on a monthly/annual basis?
- Will the union demand that union dues be deducted directly from the paycheck?
- Will the union guarantee that it will not ask the employer to deduct dues from paychecks?
- Does the union use any dues-deduction authorization form that restricts an employee's right to revoke any authorization?
- Will the union produce a copy of any dues-authorization form so employees can examine for themselves any provision that would lock employees into paying dues?
- Will the union guarantee that it will not spend dues money on politics and other activity unrelated to collective bargaining?

The Virginia law provides no protections or standards relating to union dues, fees, fines, and assessments, and union officials can be expected to exploit the absence of employee protections to maximize their revenues at the expense of employees. For example, following the passage of the Virginia law, the City of Alexandria and Arlington County enacted ordinances enabling collective bargaining.^v In the ordinances, Alexandria and Arlington both set the stage for unions to compel employees to pay dues by establishing periods of up to *one year* during which employees would be barred from revoking dues-deduction authorizations.^{vi} These provisions directly implicate public employees' constitutional rights, and employees who elect not to pay dues may have no recourse but to sue and become entangled in a lengthy, expensive litigation process.^{vii}

Collective Bargaining is a Gamble, and the Virginia Law Offers No Protections to Workers.

Collective bargaining is always a gamble for employees. Negotiations between union officials and employers are a give-and-take, and after bargaining, employees may end up with more, the same, or less (plus an obligation to pay union dues). Union officials have their own interests that differ from those of employees, and unions may trade away even wages, benefits, and other terms and conditions of employment that employees like so that the union can get items that benefit the union. Critical points about the nature of bargaining include:

- What special privileges will union officials get for themselves at the expense of employees in the bargaining unit?
 - Union-dues deductions from employees' paychecks paid directly to the union?
 - Extra paid time off for union officials for union travel, conferences, etc.?
 - Special protection for union officials against layoffs and other adversities that regular rank-and-file employees have to experience?
- Will the union guarantee in writing that it will never ask that union dues be deducted from employees' paychecks?

Once a union is certified as the exclusive bargaining representative in a unit, it has a monopoly over determining the terms of employment to negotiate, and the Virginia law does not provide any standard by which union officials must use their monopoly power. Specifically, the state law does not contain a single prohibition against union coercion of employees or restraint or interference with employee rights. That means that the union gets to pick and choose winners and losers, and rank-and-file workers may have little recourse to challenge union decision-making.^{viii} Under the unionization ordinance adopted by the City of Alexandria, for example, union misconduct must be “willful[] and without discrimination” to violate the representation duties it owes to employees, a high bar that gives union officials license to act adversely to workers without meaningful consequence.^{ix}

Similarly, in grievance procedures in unionized workplaces, union officials are often empowered to intervene in private matters presented by individual employees, which permits union officials to impose adjustments that are detrimental to individual employees but favorable to union interests.^x The Alexandria and Arlington ordinances, for example, require that the local governing bodies notify union officials about any personal complaint or question presented by an individual employee.^{xi} Under the ordinances, the union is permitted to be present “and offer its views” at any meetings to adjust an individual employee’s personal matter.^{xii} With so much at stake, employees evaluating whether to sign a union card will have to decide whether their privacy in personal matters as well as existing rights to advocate for themselves will be traded away.

Union Constitutions and Bylaws Permit Union Officials to Control Workers.

Union organizers want workers to believe that the union will provide relief from workplace rules, but unionization typically means *more* rules against employees, not fewer. They often fail to advise employees that, by signing or clicking on an authorization card, they could be waiving workplace rights, applying for union membership, and accepting internal union rules that permit union officials to impose fines and other discipline against employees.^{xiii}

Unions’ constitutions and bylaws typically contain lists of rules with which members must comply or face union disciplinary action. The SEIU 2020 Constitution and Bylaws, for example, permits the union to put members on trial for a full range of charges, including violation of vague rules prohibiting “gross disloyalty or conduct unbecoming a member,” seeking to remove the union by “advocating or engaging in dual unionism, including but not limited to aiding a rival labor organization, or secession,” and “working as a strikebreaker.”^{xiv} The AFSCME 2020 Constitution and Bylaws 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.^{xv} Workers properly may question whether a union that outlaws cooperation with management and similar other legitimate employee conduct will act in their best interests.

Unionization Brings Real Risks: Job Security and Strikes.

Especially for Virginia local government employees who typically have grievance systems and other protections, unionization does not mean job security. The unionization ordinance enacted by the City of Alexandria, for example, provides no protection against discharge and other discipline, but instead reaffirms the city’s right to discharge and take disciplinary action and defers

to existing law and regulations, including existing grievance systems.^{xvi} Moreover, under the Alexandria model, the employer retains ultimate authority over the personnel administering the ordinance. The city manager has the power to appoint the labor relations administrator, subject to confirmation by the city council and input regarding nominees from union officials.^{xvii}

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. The City of Alexandria, for example, 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.^{xviii} Before enactment of any bargaining ordinance, to pay for collective bargaining implementation, Arlington County adopted a budget for fiscal year 2022 alone that included \$350,000 for outside legal services and new positions in the county manager's office and human resources department.^{xix} The county also anticipates that "substantial additional resources will be needed in future years" to pay for more legal, management, finance, and human resources staff as well as operating departments.^{xx} 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.^{xxi}

Additionally, strikes can and do happen, even when the law purports to prohibit them, and during strikes, employers do not pay wages.^{xxii} In August 2020, city sanitation workers in Virginia Beach struck and shut down garbage collection in the city.^{xxiii} Under the Virginia law, local government workers who strike are deemed terminated and barred from state and local government employment for 12 months, but the law did not prevent the work disruption.^{xxiv} Alexandria's and Arlington's ordinances contain similar language.^{xxv} Notably, the prohibitions on public-sector strikes under Virginia, Alexandria, and Arlington law apply only to public employees but not union officials who foster illegal strikes.^{xxvi}

No Test Drives: Once A Union Gets In, It Becomes Almost Permanent.

Union organizers trying to convince employees to sign union cards sometimes tell employees that they can try out a union, and if they do not like it, they can always vote it out. Because legal rules operate to protect union officials, however, once a union is certified, it is typically very hard to remove. The Virginia law has no specific protections for employees to decertify a union, to return to union-free status, or to trade one union for another they believe is better suited to workers' interests.

Both the City of Alexandria and Arlington County have enacted legal barriers that may preclude meaningful decertification options for employees, including limitations on when a decertification petition may be filed. In Alexandria and Arlington, union organizers are free to seek a certification election at any time. In contrast, the ordinances provide that workers who want to remove a union are limited to filing a decertification petition during a narrow 30-day window period between the 180th and the 150th days "prior to expiration of any existing collective bargaining agreement . . . or any time after that collective bargaining agreement has expired."^{xxvii} Even the narrow 30-day windows may be purely illusory, however, because the ordinances also expressly prescribe that collective bargaining agreements shall remain in effect until superseded

and because an agreement can provide for no expiration.^{xxviii} As a result, employees may never be able to invoke their purported right to petition for decertification.

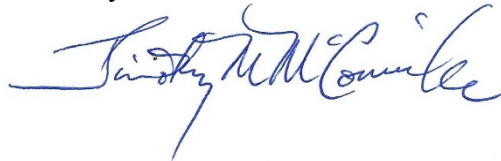
Other barriers may prevent employees from decertifying unions. The Alexandria ordinance, for example, permits union organizers to compel an election with as little as 30 percent of workers showing some degree of involvement with the union.^{xxix} To initiate a decertification election, on the other hand, workers will be required to support their decertification petition with a showing that at least 50 percent do not want the union to be their exclusive representative.^{xxx} Similarly, the Arlington ordinance permits only a *majority of employees voting* to obtain certification of a union but requires a *majority of all the employees in the bargaining unit* to vote to decertify.^{xxxi}

Similarly, the Virginia law does not contain any requirement that a union re-establish from time to time that workers want the union to continue its monopoly over employee representation. In most cases, workers forced to accept a union as their exclusive representative never cast a vote for or against the union because the union was installed many years previously and is protected and kept in place by possibly unfounded legal presumptions that workers want the union.

Conclusion.

The Virginia bargaining law offers no specific protections to individual employees, and it is unclear what standards will apply to hold union officials accountable for their statements and actions. This letter summarizes only some of the aspects that employees of local governments should consider as they evaluate their response to the law and any request by any union organizer to sign a card or click on a form on a union website or application. The decision to bring a union into the workplace may be the most important decision many workers will have made with respect to their working lives. Experience counsels that they should decide only after exploring all the facts, asking government and union officials about the critical details of the union's finances and rules applicable to employees, and even seeking legal advice if they believe such is necessary.^{xxxii}

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 AFSCME, Dep’t of Labor Form LM-2, *Labor Organization Annual Report*, File No. 000-289 (2020); NEA, Dep’t of Labor Form LM-2, *Labor Organization Annual Report*, File No. 000-342 (2020); SEIU, Dep’t of Labor Form LM-2, *Labor Organization Annual Report*, File No. 000-137 (2020); IAFF, Dep’t of Labor Form LM-2, *Labor Organization Annual Report*, File No. 000-317 (2020); FOP, Dep’t of Labor Form LM-2, *Labor Organization Annual Report*, File No. 000-411 (2020).

ⁱⁱⁱ AFSCME, Dep't of Labor Form LM-2, *Labor Organization Annual Report*, File No. 000-289 (2020); NEA, Dep't of Labor Form LM-2, *Labor Organization Annual Report*, File No. 000-342 (2020); SEIU Local 32BJ, Dep't of Labor Form LM-2, *Labor Organization Annual Report*, File No. 011-611 (2020); IAFF, Dep't of Labor Form LM-2, *Labor Organization Annual Report*, File No. 000-317 (2020); FOP Lodge 1, Dep't of Labor Form LM-2, *Labor Organization Annual Report*, File No. 541-029 (2020).

^{iv} See, e.g., *Bennett v. Council 31 of the Am. Fed'n of State, Cty. & Mun. Emps., AFL-CIO*, 991 F.3d 724, 730-31 (7th Cir. 2021) (allowing union to collect dues from public employee for length of dues authorization despite employee revoking union membership); *Belgau v. Inslee*, 975 F.3d 940, 952 (9th Cir. 2020) (same).

^v Alexandria, Va., Ordinance 5336, § 2-5-68 (Apr. 17, 2021); ARLINGTON COUNTY, VA., CODE § 6-30 (2021).

^{vi} Ordinance 5336, § 2-5-77(e) (“Any such authorization may be revoked in accordance with the terms of the authorization which shall provide a period of irrevocability of not more than one year.”); CODE § 6-30(K)(5) (same).

^{vii} See, e.g., *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2486 (2018) (holding that compelling nonconsenting public employees to pay union fees violated First Amendment of United States Constitution).

^{viii} The Virginia law conceives union officials’ power to pick winners and losers at the outset of the unionization process. Specifically, if a locality has not adopted a unionization ordinance or resolution, then union officials have initial, unilateral control over the scope of the unit of employees over which they will demand monopoly bargaining rights. VA. CODE § 40.1-57.2.C. In this context, and even in cases in which localities prescribe bargaining units upon receiving a union’s claim of majority status or in an ordinance, union officials may be heavily involved in defining bargaining units, which necessarily means they will have the power to dilute representation of employee classifications with fewer numbers of employees by throwing them into units dominated by classifications with larger numbers of employees.

^{ix} Ordinance 5336, § 2-5-82(b); see also CODE § 6-30(P)(2) (violation of union’s duty to represent employees fairly is subject to heightened standard requiring “willful or deliberate” failure).

^x See, e.g., Ordinance 5336, § 2-5-77 (with respect to any “personal complaint, concern or question” presented by individual employees, requiring that union be “afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the matter and that any adjustment shall not be inconsistent with terms of any applicable collective bargaining agreement”).

^{xi} *Id.* § 2-5-77(g); CODE § 6-30(K)(7).

^{xii} *Id.*

^{xiii} See, e.g., SEIU Virginia 512, Fairfax: Membership & Dues Deduction, available at <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 constitutions and by-laws, authorization of union to act as employee’s exclusive representative in bargaining over terms and conditions of employment which effectively waives employee’s right to represent himself or herself, 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”).

^{xiv} SEIU 2020 Constitution and Bylaws, Art. XVII, Trials and Appeals, § 1, available at <https://www.seiu.org/cards/what-you-should-know-about-our-constitution-and-leaders/you-can-read-it-yourself/p3>.

^{xv} AFSCME International Constitution 2020, Art. X, Judicial Procedure, § 1, available at <https://www.afscme.org/about/governance/AFSCME-International-Constitution.pdf>.

^{xvi} Ordinance 5336, § 2-5-70 (“the city retains exclusive rights, including, but not limited to, the right[] to: . . . hire, promote, transfer, assign, retain, classify and schedule all employees and to suspend, demote, discharge, or take other disciplinary action against employees in accordance with applicable law and regulations”).

^{xvii} *Id.* § 2-5-73.

^{xviii} 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>.

^{xxix} 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.”).

^{xx} *Id.*

^{xxi} 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>.

^{xxii} See VA. CODE § 40.1-55 (prohibiting state and local government employees, but not union officials, from suspending activity or operation of employing agency, striking, or willfully refusing to perform duties).

^{xxiii} Joe DeManuelle-Hall, *Virginia Public Sector Workers Are Organizing to Make Their New Bargaining Rights a Reality*, LABOR NOTES, (Mar. 25, 2021), <https://labornotes.org/2021/03/virginia-public-sector-workers-are-organizing-make-their-new-bargaining-rights-reality>.

^{xxiv} § 40.1-55.

^{xxv} *Id.*; Ordinance 5336, § 2-5-81; CODE § 6-30(O)(1).

^{xxvi} See § 40.1-55.A. (“Any *employee* . . . in concert with two or more other such *employees* . . .”) (emphasis supplied); Ordinance 5336, § 2-5-68, § 2-5-81 (employing language similar to § 40.1-55.A. to define and prohibit strikes by employees). The Alexandria and Arlington ordinances also purport to provide for penalties applicable to “[a]ny employee organization determined to have violated this [section].” Specifically, the ordinances state that the union “shall cease to be accorded recognition under this article, shall cease to receive any dues or fees collected by paycheck withholding and shall not be accorded recognition or receive any dues or fees collected by paycheck withholding for a period of one (1) year.” Ordinance 5336, § 2-5-81; CODE § 6-30(O)(2). The sections, by their own terms, however, do not apply to unions, which begs the question how penalties can be imposed on unions for violation of a prohibition that does not apply to unions.

^{xxvii} Ordinance 5336, § 2-5-76(c); CODE § 6-30(J)(3).

^{xxviii} See Ordinance 5336, § 2-5-68 (defining “collective bargaining agreement” as “the written legal contract between the city and an exclusive bargaining agent representing the employees in a bargaining unit authorized by this article and resulting from collective bargaining as defined in this section” which definition requires the “good faith intention of reaching an agreement of no shorter duration than three (3) years and remaining in effect until superseded by a new agreement.”).

^{xxix} Ordinance 5336, § 2-5-75(a).

^{xxx} *Id.* § 2-5-76(b).

^{xxxi} CODE §§ 6-30(H)(1), (J)(5).

^{xxxii} 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.