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F. VINCENT VERNUCCIO

WORKER'S CHOICE:

FREEING UNIONS AND WORKERS FROM FORCED REPRESENTATION





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Worker's Choice: Freeing Unions and Workers from Forced Representation

By F. Vincent Vernuccio

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Executive Summary

Right-to-work laws give workers the choice over whether to financially support the union organized in their workplace. Employees who opt out of belonging to a union, however, still must accept union-negotiated compensation and terms of employment. Similarly, because a union represents all workers, it is obligated to provide services for nonmembers. Labor organizations routinely claim that this makes these nonmember employees “free riders,” arguing that they are getting something for nothing. From a different perspective, nonmember employees are also “forced riders,” obligated to accept the union’s representation whether they want it or not.

States with right-to-work laws can mitigate this issue for their public sector workers and unions. The policy outlined in this paper —“Worker’s Choice” — would release employees from unwanted union representation and relieve unions from providing services to so-called free/forced riders. In addition to this, Worker’s Choice aims to enhance freedom-of-association rights, increase public sector productivity and make government unions more responsive to their dues-paying members. It is also carefully designed to avoid increasing the burden of negotiating with public sector unions.

Worker’s Choice would enable public sector employees who opt out of union membership to represent themselves, and it would relieve unions of the duty to provide these employees with services. Nonmember employees would negotiate for their own compensation and working conditions, which would be separate from the union contract. Therefore, public sector employees in unionized workplaces would choose one of two options:

- 1) Be a union member and accept the working conditions negotiated by the union;
- 2) Opt out of union membership and negotiate for compensation and working conditions independently.

Worker’s Choice does not require major changes to a state’s public sector bargaining law. In fact, the legislation required to enable this policy is relatively simple (see model legislation in Appendix A). But the impact of Worker’s Choice is significant: It would enhance employee freedom in the workplace and fix the free/forced rider problem that afflicts both public sector unions and workers in right-to-work states.

Introduction

Many states grant public sector unions, like most unions in the private sector, the privilege of being the “exclusive representative” for all workers in an employee group, also called a bargaining unit. As such, these government unions are charged with providing the “duty of fair representation” for every employee in the bargaining unit, regardless of whether or not they are actually a member of the union. In right-to-work states, where financially supporting a union is voluntary, unions often claim this creates a “free rider” problem, even though they have lobbied in the past for the ability to represent all workers in a bargaining unit.¹

At issue is that public sector unions are required by many states to provide services to employees who are allowed to opt out of financially supporting them. These nonmember employees² receive some services from the union, such as collective bargaining over compensation and working conditions and providing representation in case of a dispute with the employer. From a union’s perspective, employees who opt out of union membership in right-to-work states are getting something for nothing — hence, the free rider label.

On the other hand, a case could be made that these nonmember employees are just as much “forced riders” as they are “free riders.” Nonmembers may not want the same pay structure, benefits and working conditions the union negotiates on their behalf and that they are forced to accept. For example, perhaps a nonmember employee would like to negotiate for a higher salary in exchange for less paid leave time. Or perhaps a working mother would accept less pay to gain a more flexible work schedule that allowed her to spend more time with her children (and save on daycare expenses).

Similarly, nonmember employees may not want the union to interfere in disputes with employers, believing they could manage the situation better on their own.³ Since the union is the exclusive representative, however, nonmember employees must accept the union’s negotiated pay, benefits, working conditions and representation.⁴

Despite these opposing viewpoints on the free/forced rider problem, the solution is relatively simple: Allow workers who opt out of unions to represent themselves — referred to in this paper

* Throughout this paper, employees in a unionized worksite who are members of the union will be referred to as “union member employees.” Employees in a unionized worksite who have exercised their right-to-work rights and opted out of union membership will be referred to as “nonmember employees.” Employees in a nonunionized worksite will be referred to as “nonunion employees.”

† For instance, some workers may feel that the union representing them does not take their complaints seriously. An example of this concern comes from Joseph Valenti, president of the Teamsters Local 214 in Michigan. He said most workers’ grievances were “frivolous.” Tom Gantert, “Union Executive Calls Most Member Grievances ‘Frivolous,’” *Michigan Capitol Confidential* (Mackinac Center for Public Policy, Sept. 3, 2013), <http://perma.cc/T4ND-DU74>.

‡ The National Labor Relations Board, the federal agency that administers the National Labor Relations Act, holds that workers have the “right to fair representation.” This applies to both union members and nonmembers and applies to “virtually every action that a union may take in dealing with an employer ... including collective bargaining, handling grievances, and operating exclusive hiring halls.” Although these policies only technically apply to private sector unions, many states have modeled their public sector labor laws after the NLRA, and so the NLRB’s interpretation of the law applies for most public sector unions too. “Right to Fair Representation” (National Labor Relations Board), <http://perma.cc/K9N7-WCRS>.

as “Worker’s Choice.” Under this policy, public sector employees* in unionized workplaces would choose one of two options:

- 1) Be a union member and accept the working conditions negotiated by the union;
- 2) Opt out of union membership and negotiate for compensation and working conditions independently.

This policy would both solve the free/forced rider problem and expand the freedom of individual workers. Public sector unions would no longer be forced by state law to provide services to nonmembers, but would maintain their exclusive representation privilege — only one union could organize employees in a unit. Individual government employees would no longer be forced to accept the compensation and working conditions negotiated for them by an organization they do not wish to support.

Further, public employees who opt out of union membership will have the freedom to negotiate for the type of wages, benefits and working conditions that best suits their needs. These nonmember employees would maintain all the same rights as employees working in nonunionized worksites. Finally, this policy would be relatively simple to legislate, requiring only small changes to a state’s public sector bargaining law.†

The State of Current Public Sector Labor Laws

The majority of private sector labor law as it is known now started with the National Labor Relations Act, or Wagner Act, which President Franklin Roosevelt signed into law in 1935.‡ While the NLRA controls nearly all collective bargaining policies in the private sector, the law does not apply to public sector employees. With the exception of federal employees, public sector collective bargaining is primarily governed by state laws. Government employees at the state and local level did not begin gaining the ability to collectively bargain until the late 1950s.§

Most states modeled their public sector labor law after the NLRA, and today many states’ public sector union laws still resemble that model. This means that many state laws include policies about exclusive representation, election rules for establishing unions, and requiring employers to

* Although this paper discusses only changes to laws pertaining to state and local public sector employees, Congress could reform the National Labor Relations Act to enable Worker’s Choice for all private sector employees.

† See “Appendix A: Worker’s Choice Model Legislation” for more details.

‡ The NLRA (29 U.S.C. § 151-169) was passed after the Supreme Court found its predecessor, the National Industrial Recovery Act of 1933, unconstitutional. Since the NLRA’s passage, it has been amended by statutes such as the Taft–Hartley Act of 1947 (29 U.S.C. § 401-531), which, among things, gave states the ability to enact right-to-work laws and the Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act of 1959), which brought greater transparency to union finances. Robert P. Hunter, “Michigan Labor Law: What Every Citizen Should Know” (Mackinac Center for Public Policy, 1999), 9–11, <http://perma.cc/ZH87-CNGV>.

§ The first state to allow collective bargaining for public employees was Wisconsin, in 1958. Federal workers were unable to collectively bargain until President John F. Kennedy signed Executive Order 10988 in 1962. Paul Moreno, “How Public Unions Became So Powerful,” *The Wall Street Journal*, Sept. 11, 2012, <http://perma.cc/5URY-RY5U>; Amity Shlaes, “How Government Unions Became So Powerful” (Council on Foreign Relations, Sept. 4, 2010), <http://perma.cc/BZ7P-PGAS>.

“bargain in good faith.”² States still reserve the power, however, to set their own public sector labor laws and are not legally bound by federal precedent. As a result, public sector collective bargaining policies vary across the states.

For example, Virginia outlaws public sector collective bargaining altogether.³ Arizona limits public sector bargaining to a “meet and confer” status, which provides government employers “with information on employment and personnel issues and to aid in informed government decision making.”⁴ Missouri allows multiple unions to negotiate on behalf of different workers within the same employee group in some public school districts.⁴ Wisconsin passed legislation recently that significantly limits the topics of bargaining; unions there may only bargain over limited salary increases.⁵

For states interested in providing workers with more freedom, these differing approaches to public sector laws may not be of much use as models for reform. For most states, it would require substantially revamping their public sector labor law, which may be a heavy lift politically. But providing public employees freedom of association with a right-to-work law and the freedom to represent themselves with Worker's Choice could work well in many states. It requires only minor changes to state law and leaves untouched the unique and traditional policies on public sector collective bargaining in each state.

How Worker's Choice Works

With Worker's Choice, all public sector employees would fall into one of three categories:

- ◆ **Union members:** Workers in a unionized employee group who choose to be members of and pay dues to the single union that represents their bargaining unit.
- ◆ **Nonmembers:** Workers in a unionized employee group who have opted out of membership in the single union that represents their bargaining unit and are representing themselves independently.
- ◆ **Nonunion:** Employees in a nonunionized employee group.

Worker's Choice will not affect two of these categories of employees: union members and nonunion employees. Union members would still work under exactly the same terms and conditions of the collective bargaining agreement negotiated for them by their union. All of the state laws that govern collective bargaining for these unions would remain the same. Likewise, nonunion public sector employees would still have all the protections of civil service status (to the extent allowed or mandated under state law), and their employers would maintain the ability to negotiate individually with them.

Only nonmember employees would be affected by Worker's Choice. While they may be part of an employee group that is unionized, nonmember employees would no longer be subject to the

* “Executive Order 2008-30: Establishing a Meet and Confer Process for Executive Agencies of State Government” (State of Arizona, Dec. 17, 2008), <http://perma.cc/6W62-2GGK>. Critics of meet and confer claim that it is not distinctive enough from collective bargaining, and negotiations are “conducted under the very real threat of costly litigation.” Nick Dranias, “Time to End the ‘Meet and Confer’ Shakedown” (Goldwater Institute, March 6, 2012), <http://perma.cc/JBE7-CWS3>.

terms and conditions of the collective bargaining agreement negotiated for their employee group by a union. Instead, nonmember employees would be treated as independent workers, essentially the same as nonunion employees. Unions would no longer represent them in grievance or disciplinary hearings.

These nonmember employees would have the same rights that nonunion employees currently have, such as those guaranteed by state civil service laws for public employees, occupational safety and health acts and the federal Civil Rights Act of 1964, among others.^{*} Similarly, public sector employers would have only obligations to these nonmember employees as they do to nonunion employees. If employers are under no “duty to bargain” with nonunion employees, they would also not be required to negotiate new contracts with nonmember employees. Conceivably, employers could give nonmember employees a take-it-or-leave-it contract offer and refuse to negotiate any further, a routine practice for employers of nonunion employees.

With Worker's Choice, nonmember employees may likely receive similar terms and working conditions to the ones negotiated by the single union of their employee group. This would presumably make it simpler for public employers to manage two categories of workers. However, even in this case, the union would be under no obligation to negotiate for nonmember employees or represent them in grievance or disciplinary hearings.

Further, as is common for the 93 percent of workers in the private sector and 61 percent of workers in the public sector who are not unionized, nonmember employees would likely be offered the benefits and working conditions that apply to all employees in a particular group, or even the entire workplace.⁶

None of this prevents these nonmember employees, however, from negotiating with their public employer for different and unique pay and working terms that best fit their individual needs. These could include flexible work schedules, merit-based pay or bonuses, remote work arrangements, special leave allowances and many others. Since some of these arrangements could potentially help public employers increase productivity and retain talented employees, it would be in their best interest to pursue these alternative working arrangements for these individual, nonmember employees.

However, in some states, such as Michigan, public employers are prohibited from offering conditions of employment that would influence a worker's decisions to join or not join a union.⁷ Under Worker's Choice, therefore, public employers would need to be careful not to cross this line, especially because they could be offering different compensation and working arrangements to workers within the same employee group. States also are free to clarify nondiscrimination language in their current law to show that separate negotiations with nonmembers are not attempts to influence an employee's decisions about union membership.

It is hard to predict the exact impact that Worker's Choice will have on public sector employment. Some nonmember employees who are apprehensive of negotiating for themselves may rejoin a

^{*} In many states, working conditions for public employees are governed by other laws, such as teacher tenure acts and civil service laws. Therefore, nonmember employees may have other certain rights and privileges guaranteed by state law.

union, for example. On the other hand, some union members, who would have otherwise maintained their membership, may be enticed to resign from the union by the opportunity to negotiate working conditions that are tailored to their individual needs.

One-or-None

A key element of Worker's Choice is that it will not affect a state's established collective bargaining laws. One and only one union will be able to represent all union members in a bargaining unit, and that union will still negotiate wages, hours, working conditions, and anything they could negotiate previously. The only difference is that there would be no duty of fair representation, and unions would no longer be forced to represent and provide services to nonmember employees.

Since most states' public sector collective bargaining laws grant exclusive bargaining privileges to one union for an employee group, workers who opt out of their union will not be able to organize into their own separate union. In other words, there will be only one union that can organize workers in a particular bargaining unit. This is important, because a "one-or-none" arrangement avoids the problems associated with micro-unionism, an issue that is starting to cause issues in the private sector and explained in more detail in the following section.

Worker's Choice Avoids Micro-unions

In the private sector, most unions are the exclusive representative for all employees in a unit. Labor experts, such as former chair of the NLRB and President Clinton appointee William Gould, scholar Charles J. Morris and the Heritage Foundation's James Sherk, maintain that private sector unions may create "members-only agreements."⁸ Members-only agreements allow unions to negotiate contracts that cover only dues-paying members, effectively eliminating the free/forced rider issue, but these agreements do not grant unions the same privileges as organizing under the NLRA.

There are developments under way, however, that might allow members-only agreements to gain the power of exclusive representation, and this could pose significant problems for both public and private sector employers. As opposed to the one-or-none component of Worker's Choice, members-only agreements with the power of exclusive representation could lead to "micro-unions," which some unions are trying to implement in the private sector through reinterpretations of federal labor law.

A recent ruling by the NLRB may have given micro-unions a jump start. In the *Specialty Healthcare* decision, the NLRB started to redefine the parameters of the size of a collective bargaining unit. The ruling appears to allow unions to organize hyper-specific units within an employee group in the same business.

For example, in August 2014, the NLRB used the *Specialty Healthcare* decision to justify allowing 41 cosmetics and fragrances employees in a Macy's store in Saugus, Mass. to petition to form a micro-union. These 41 employees are only a third of the store's 120 "selling" employees (sales people in similar positions to the cosmetics and fragrances employees) and just over a quarter of the store's total employees.⁹

The decision enables the 41 employees to petition for an election to organize a union. Even if every cosmetics and fragrances employee votes to unionize, it will only amount to a fraction of the store's employees. If the union is formed by a slim margin in the election, less than one in five of the store's employees will have voted for the union, but Macy's will, nevertheless, be obligated to negotiate a contract with the union (in this case, the United Food and Commercial Workers).¹⁰

Michael Lotito, a management-side attorney in San Francisco, told *The Wall Street Journal* after the decision, "The [NLRB] is very well-positioned to give unions an enormous organizing advantage by determining these small units."¹¹

Micro-unions show the potential for abuse if members-only agreements are given too much power. Many established unions are not likely to adopt these agreements without the privileges of exclusive representation.* As a result, members-only agreements in the private sector are currently still rare.

In many states, it is illegal for public sector unions to have members-only agreements, because, as mentioned, state law requires public sector unions to be the "exclusive representatives" of all the employees in an employee group.† States with exclusive representation laws for public sector unions creates the one-or-none component of Worker's Choice and prevents against the creation of micro-unions.

The Benefits of Worker's Choice

A chief benefit of Worker's Choice is its legislative simplicity. It would require only a small change to most states' public sector employment law, but would provide public employees an enhanced ability to exercise their freedom of association and provide them more control over their own pay and working conditions.

Worker's Choice aims to provide the following benefits:

- ◆ **It will increase freedom for workers:** Nonmember public employees will be both free to completely disassociate themselves from a group they do not wish to support and free to negotiate their own preferred method of compensation and working conditions. Since no two workers are the same, this will make it easier for workers to meet their own unique needs in their own way, rather than just those that a union has decided would be good for them.

* Without exclusive representation, an employer does not have a duty to bargain with a members-only union. The union does not have the protection from so-called "raiding," or attempts by other unions to organize the same workers. (Unions with exclusive representation privileges are protected against raiding for a certain number of years after they sign a contract with an employer.)

† For example, Michigan's law states, "Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for such purposes, *shall be the exclusive representatives* of all the public employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the public employer" (emphasis added).

Michigan's use of "shall be" eliminates the ability for government unions to enter into members-only agreements. The statute also provides individual employees the ability to adjust grievances with their employer, if a grievance is outside the collective bargaining agreement so long as the union has the ability to be present during the grievance adjustment. However, nearly all grievances are likely to fall under the terms of the collective bargaining agreement, and thus the union would represent these employees, even against the employees' will. MCL § 423.211.

- ♦ **It will fix the free/forced rider issue:** Eliminating public sector unions' duty of fair representation would address one major objection unions commonly make about right-to-work laws. Unions would be freed from providing services to employees who do not financially support them. Likewise, public employees would no longer be forced to accept the pay, benefits and representation of a union they do not wish to support.
- ♦ **It will boost public sector productivity:** Most public sector union contracts prescribe that pay must be based exclusively on seniority.¹² Effective and productive workers are not allowed to earn more than less effective and productive workers. With the freedom to negotiate their own methods of compensation, nonmember employees could be compensated based in part on their productivity, which, in turn, could have a positive impact on the entire workplace.¹³ Since these employees provide taxpayer-funded services, this would also benefit taxpayers, as they would be getting more effective and better services for their money.
- ♦ **It will make unions more responsive to workers' needs:** Providing public employees with Worker's Choice may make unions more responsive to their own dues-paying members. If unions do not adapt to the changing needs of their members and employees see that they can do better negotiating their own contracts, more of them may resign from the union. Unions will have to provide enough benefits to members to genuinely earn their support, which will in turn benefit union members.¹⁴
- ♦ **It will prevent imposing new burdens on government employers:** Working within existing public sector collective bargaining laws, Worker's Choice will not allow for the rise of micro-unions. This will protect employers from being forced to negotiate with more than one union per employee group. While it may require public employers to negotiate individual contracts with some employees for the first time, most public employers already use similar arrangement for nonunion employees — about 61 percent of government employees are not unionized.¹⁵

Appendix A below contains draft model legislation which details the major provisions of Worker's Choice. The draft attempts to prevent ways in which unions could use the independently negotiated contracts with individual employees as a means to increase their position at the bargaining table; it prohibits unions from linking the terms of their collective bargaining agreement to the terms of a nonmember employee's contract or discriminating against nonmembers. An example of this practice would be a union negotiating that its lowest-paid member be paid higher than the highest-paid nonmember. The draft legislation in Appendix A would make this type of activity an unfair labor practice.

Conclusion

Worker's Choice provides a method to fix the free/forced rider issue that exists in right-to-work states. Without requiring a complete overhaul of a state's public sector collective bargaining law, this policy can free unions from having to provide services to employees who do not support them, and allow individual employees to represent themselves and negotiate independently with their employers.

This policy will likely lead to several other benefits as well. Public sector employees would be able to completely disassociate themselves from unions, if they so choose. They will also have a better chance of meeting their unique needs by negotiating an independent contract with their public sector employer. Facing the risk of losing more members, unions will need to focus their efforts and provide better services to dues-paying members. To the extent that public employers can negotiate individual contracts with nonmember employees to increase productivity and retain talented employees, taxpayers will benefit by receiving more efficient and effective public services.

Further, Worker's Choice would avoid the potential problem of micro-unions, which are starting to develop in the private sector. By working within the constraints of current public sector collective bargaining laws, not more than one union per employee group that was elected by a majority of the unit would be allowed to organize. This assures that public sector employers would not have to suddenly start negotiating with multiple unions.

Finally, the principle underlying Worker's Choice is to provide public employees with as much freedom as possible within the framework of existing public sector collective bargaining laws. Public employees should not be forced to accept the compensation structure, working conditions and representation of a union that they do not wish to associate with. More public employees should be able to meet their unique needs with regards to pay and working conditions, regardless of whether or not the employee group to which they belong is unionized or not.

About the Author

F. Vincent Vernuccio is director of labor policy at the Mackinac Center for Public Policy. He is a graduate of the Ave Maria School of Law in Ann Arbor, Mich. Under President George W. Bush, he served as special assistant to the assistant secretary for administration and management in the Department of Labor.

Vernuccio has published articles and op-eds in such newspapers and magazines as *The Wall Street Journal*, *New York Times*, *Investor's Business Daily*, *The Washington Times*, *National Review*, *Forbes* and *The American Spectator*. He has been cited in several books, and he is a frequent contributor on national television and radio shows, such as "Your World" with Neil Cavuto and Varney and Company.

Vernuccio is a sought-after voice on labor panels nationally and in Washington, D.C. A regular guest on Fox News channels, Vernuccio has been described by Stuart Varney as a "top union watchdog."

He has advised senators and congressmen on a multitude of labor-related issues. He has testified before the United States House of Representatives Subcommittee on Federal Workforce, Postal Service and Labor Policy.

Vernuccio lives with his wife in Ann Arbor, Mich.

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Appendix A: Worker's Choice Model Legislation *

Definitions:

(A) "Independent bargaining" or "to bargain independently" means to bargain between a public employer and a public employee with respect to rates of pay, wages, hours of employment, adjustment of grievances or other terms and conditions of employment without the intervention of an employee organization, bargaining agent, or exclusive bargaining representative.

(i) Independent bargaining does not grant any greater or lesser rights or privileges to public employees who have chosen to represent themselves in a unit with an exclusive representative than those public employees in a unit without an exclusive bargaining representative.

(ii) Independent bargaining does not grant any greater or lesser duties or obligations for a public employer to public employees who have chosen to represent themselves in a unit with an exclusive bargaining representative than those duties or obligations the public employer owe to public employees in a unit without an exclusive bargaining representative.

(B) "Employee organization" means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(C) "Public employee" means a person holding a position by appointment or employment in the government of this State, or any of its political subdivisions, including, but not limited to, public schools, and any authority, commission or board, or in any other branch of public service.

(D) "Public employer" means any state or local government, government agency, government instrumentality, special district, joint powers authority, public school board or special purpose organization that employs one or more persons in any capacity.

(E) "Collective bargaining" means the performance of the mutual obligation of the representatives of the public employer and the employee organization designated as an exclusive bargaining representative to meet and bargain in good faith in an effort to reach written agreement with respect to wages, hours, and terms and conditions of employment.

(F) "Exclusive bargaining representative" means any employee organization that has been certified or designated by the [state agency] pursuant to the provisions of [insert applicable state labor law] as the representative of the employees in an appropriate collective bargaining unit to represent the employees in their employment relations with employers.

Public employee choice guaranteed.

(A) Public employees shall have the right to independently bargain in their relations with the public employer.

* The language of this model legislation has been previously published by the author.

(B) No provision of any agreement between an employee organization and a public employer, or any other public policy, shall impose representation by an employee organization on public employees who are not members of that organization and have chosen to bargain independently. Nothing in any collective bargaining agreement shall limit a public employee's ability to negotiate with his public employer or adjust his grievances directly with his public employer, nor shall a resolution of any such negotiation or grievance be controlled or limited by the terms of a collective bargaining agreement.

(C) There shall be not more than one exclusive bargaining representative designated by the [state agency] pursuant to the provisions of [state labor law] as the representative of the public employees in an appropriate collective bargaining unit.

(D) No provision of any agreement between an employee organization and a public employer, or any other public policy, shall impose any wages or conditions of employment for members of an employee organization which are linked or contingent upon wages or conditions of employment to public employees who are not members of an employee organization.

Endnotes

- 1 Michael Kinsley, "The Liberal Case Against Right-to-Work Laws" (BloombergView, Dec. 12, 2012), <http://perma.cc/MVQ5-AU29>; "Group Announces Campaign for Anti-Union Laws in Michigan" (Michigan Education Association, June 30, 2011), <http://perma.cc/MFF4-39WN>; Heather Niemetschek, "Illinois Unions Wrote the Laws They Blame in 'Fair Share' Debate" (Illinois Policy Institute, Feb. 28, 2015), <http://perma.cc/P82D-MWR2>.
- During a 2013 hearing on the Michigan Education Association's actions regarding the implementation of right-to-work, Michigan Sen. Arlan Meekhof, R-West Olive, chairman of the Compliance and Accountability Committee, asked MEA spokesman Doug Pratt, "Is there contention by the MEA that you would wish to be relieved of representing those people who want to opt out of the union?" Pratt, after a pause, answered, "No." Jack Spencer, "MEA Says Union Members Should Have Known About Limited Window to Leave," *Michigan Capitol Confidential* (Mackinac Center for Public Policy, Dec. 5, 2013), <http://perma.cc/GHSJ-S9TB>.
- 2 For example, see Robert P. Hunter, "Michigan Labor Law: What Every Citizen Should Know" (Mackinac Center for Public Policy, 1999), 45–49, <http://perma.cc/ZH87-CNGV>.
- 3 Va. Code § 40.1-57.2.
- 4 "Collective Bargaining Policy" (Columbia Public Schools, July 28, 2011), <http://perma.cc/KD2E-FH8V>; Audrey Spalding, "Teacher Union Bargaining Cases Move Forward" (Show-Me Institute, Oct. 27, 2009), <http://perma.cc/DF92-XR8P>.
- 5 "2011 Wisconsin Act 10" (State of Wisconsin, March 11, 2011), <http://perma.cc/NW3X-LM2M>.
- 6 "Table 3: Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry, 2013-2014 Annual Averages" (U.S. Bureau of Labor Statistics, Jan. 23, 2015), <http://perma.cc/CPJ4-3D7U>.
- 7 MCL § 423.210(1)(c).
- 8 William B. Gould, *Agenda for Reform: The Future of Employment Relationships and the Law* (The MIT Press, 1996); Charles J. Morris, *The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace* (Ithaca, N.Y.: ILR Press, 2004); James Sherk, "The Right-to-Freeload Myth" (The Heritage Foundation, Dec. 10, 2012), <http://perma.cc/UE3X-A9BV>.
- 9 *Macy's, Inc. and Local 1445, United Food and Commercial Workers Union*, 361 NLRB No. 4 (2014).
- 10 *Ibid.*
- 11 Kris Maher and Melanie Trottman, "Unions Can Organize 'Micro Units,' Court Affirms," *The Wall Street Journal*, Aug. 16, 2013, <http://perma.cc/7DHQ-UJ9P>.
- 12 Audrey Spalding, "Use of Seniority to Determine Layoff Decisions" (Mackinac Center for Public Policy, Mar. 5, 2014), <http://perma.cc/V56F-BY7S>; James Sherk and Ryan O'Donnell, "RAISE Act Lifts Pay Cap on Millions of American Workers" (The Heritage Foundation, June 19, 2012), <http://perma.cc/TLU2-RJ69>.
- 13 James Sherk and Ryan O'Donnell, "RAISE Act Lifts Pay Cap on Millions of American Workers" (The Heritage Foundation, June 19, 2012), <http://perma.cc/TLU2-RJ69>.
- 14 F. Vincent Vernuccio, "Unionization for the 21st Century: Solutions for the Ailing Labor Movement" (Mackinac Center for Public Policy, 2014), <http://perma.cc/D7VB-3E3U>.
- 15 "Table 3: Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry, 2013-2014 Annual Averages" (U.S. Bureau of Labor Statistics, Jan. 23, 2015), <http://perma.cc/CPJ4-3D7U>.

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F. Vincent Vernuccio is labor policy director at the Mackinac Center for Public Policy. He is a graduate of the Ave Maria School of Law and has served as a special assistant in the U.S. Department of Labor. He has published op-eds in such newspapers as *The Wall Street Journal*, *Investor's Business Daily*, *National Review* and *The American Spectator*, and has appeared on state and national television news programs regarding labor issues.