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OHIO WORKPLACE FREEDOM AMENDMENT FAQs

The 1851 Center has drafted model language that would protect the workplace freedom of Ohioans from forced labor union participation.

If sufficient signatures are gathered, this amendment would appear on the November 2012 ballot. If enacted, it would become the 22nd Section in Ohio's Bill of Rights, right behind Ohio's 21st section, the Health Care Freedom Amendment, also drafted by the 1851 Center in 2010.

What is the exact language of the Amendment?

Be it resolved by the people of the State of Ohio that Article I, Section 22 of the Ohio Constitution be adopted and read as follows:

ARTICLE I

Freedom to choose whether to participate in a labor organization as a condition of employment

Section 22 (A) No law, rule, agreement, or arrangement, shall require, directly or indirectly, any person or employer to become or remain a member of a labor organization.

Section 22 (B) No law, rule, agreement, or arrangement shall require, directly or indirectly, as a condition of employment, any person or employer to pay or transfer any dues, fees, assessments, other charges of any kind, or anything else of value, to a labor organization, or third party in lieu of the labor organization.

Section 22 (C) Nothing in this section shall (1) prevent any person from voluntarily belonging to or voluntarily providing support to a labor organization; or (2) apply to agreements entered into or renewed prior to the enactment of this section.

Section 22(D) No other provision of the Ohio Constitution shall impair or limit the rights contained herein.

Section 22(E) This section shall be implemented to the maximum extent that the United States Constitution and federal law permit. Any invalid or inoperative provisions shall first be construed as not conflicting with federal law, and then, only if necessary, severed from remaining portions of the section, which shall remain in effect.

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Section 22(F) Any person, directly or indirectly affected or threatened with any harm by a violation of this section, may bring a civil or equitable action to enforce this section, and upon prevailing shall be entitled to injunctive relief, reasonable attorney fees, costs, and other damages.

Section 22 (G) Definitions

- (1) “Labor organization” means any agency, union, employee representation committee, or organization of any kind that exists for the purpose, in whole or in part, of dealing with employers concerning collective bargaining, grievances, wages, benefits, rates of pay, hours of work, other forms of compensation, or other conditions of employment.
- (2) “Person or employer” includes all persons and employers in the state of Ohio, whether public or private, with the exception of the federal government of the United States and its employees.
- (3) Indirect requirements, include, but are not limited to the imposition of fines, penalties, or other costs or charges for, or the conditioning of public or private sector employment or employment opportunities on (a) failure to become or remain a member of a labor organization; or (b) paying or transferring dues, fees, assessments, other charges, or anything else of value to a labor organization. Indirect requirement further includes payments to third parties in lieu of the payments prohibited above.
- (4) “Fines, penalties, or other costs or charges” includes but is not limited to any civil, criminal, contractual or other penalty; any fine, tax, or monetary charge; or any salary or wage withholding or surcharge or fee that is used to punish or discourage the exercise of rights protected under this section.

What does the Workplace Freedom Amendment do?

The Workplace Freedom Amendment permits Ohioans to choose a vocation and workplace of their choice, without concern over being compelled to join a labor union, or make payments to a labor union, or a third party designated by a labor union. The payments include political assessments and what are often called “fair share” fees.

The Amendment enacts the principle recently described by the Oklahoma Supreme Court as follows: “every worker should have the right to decline to pay dues to an organization whose views the worker may oppose.”

What doesn't the Workplace Freedom Amendment do?

Ohioans will remain free to voluntarily establish, join, and/or make payments to any labor union they wish. Further, the Amendment will not invalidate existing collective bargaining agreements, or upset existing pension funds. Also, the Amendment does not apply to employees of the federal government.

Why consider the Workplace Freedom Amendment?

Ohio’s current unemployment rate remains over 9 percent - - over 530,000 Ohioans are looking for work, and can’t find it. This rate of unemployment is much higher than the average unemployment in “right-to-work” states: unemployment rates in right-to-work states tend to run approximately 1.4 percent lower than in forced union states such as Ohio. See *Right to Work Laws: Liberty, Prosperity, and Quality of Life*, citing U.S. Census Bureau Data, by Richard Vedder, Cato Journal, Vol. 30, No. 1 (Winter 2010).

Between 1995 and 2005, **private-sector job growth in right-to-work states was 500 percent greater than private sector job growth in Ohio** (the total number of private sector jobs in Ohio has actually declined since 2001). See *Case for an Ohio Right to Work Law is both Moral and Economic*, National Institute for Labor Research.

Incomes of residents in right-to-work states grew by 142 percent more than incomes of Ohioans; and private health care coverage for in right-to-work states increased by 11.5 percent, while private health care coverage amongst Ohioans *declined* by .2 percent. See *Case for an Ohio Right to Work Law is both Moral and Economic*, National Institute for Labor Research.

After passing a right-to-work law in 1986, Idaho spent several decades leading the nation in job creation; meanwhile, after passing its law in 2001, Oklahomans' incomes have grown at a rate beyond the national average, and the state has successfully recruited major auto manufacturing facilities. See *Right to Work States Benefit from Faster Growth, Higher Real Purchasing Power – 2008 Update*, National Institute for Labor Research.

The Federal Reserve Bank of St. Louis studied Idaho, and concluded that due to RTW, Idaho experienced “an acceleration in manufacturing growth,” while their non-RTW neighbors did not, and “growth in the number of business establishments was about seven times larger” than the pre RTW growth rate.

Taxes and costs of goods and services are lower in right-to-work states. Id.

Equity values of publicly-traded businesses in right-to-work states appreciate greater than in Ohio, meaning that workers holding company stock in retirement accounts realize greater gains.

How does workplace freedom affect employees' wages?

The seminal study on the matter, *The Determinants and Effects of Right to Work Laws*, published in the Journal of Economic Research, concludes that “Right to Work laws do not have strong lasting effects on wages . . . no impact on union wages, nonunion wages, or average wages.” Other economists have found that after-tax wages are \$1,145 higher in right to work states, while the Mackinaw Center for Public Policy concludes that incomes are .2 percent higher in right-to-work states. In 2004, the National Institute for Labor Relations Research found wages to be slightly higher in right-to-work states.

Most studies demonstrate that “right to work” laws cause cost of living to fall, because union labor tends to raise costs of goods and services. Thus, while studies also find that *nominal* wages do sometimes fall, cost of living falls faster, causing *real* wages to increase. See *Effect of Right to Work Laws on Employees, Unions and Business*, by John Cooper.

Are there non-economic factors worth considering?

Yes. First, economic factors have non-economic consequences. For instance, when there is insufficient work in Ohio, adult children and recent college graduates leave the state, families are broken apart, and less brilliant minds remain in Ohio. Second is a purely moral component. As explained by the Supreme Court of Maine, “[f]reedom to associate of necessity means as well freedom

not to associate.” In other words, the law should not transgress First Amendment principles by compelling Ohioans to participate in highly-political associations, or instead pay a steep penalty. Ohioans should be free to choose workplace associations for themselves.

Are there political factors worth considering?

Yes. Forced unionism tends to create disproportionately influential political machines that do not reflect the views of many union workers.

In 2010, pollster Frank Luntz found that even as unions contributed funds to only Democrat Party candidates and causes, 60 percent of union members opposed their union bosses’ political spending in the midterm elections, over half of union members disapproved of President Obama, “Obamacare,” the 2009 stimulus bill, and 2008 corporate bailouts. Meanwhile, 80 percent of union workers surveyed supported workplace freedom through making dues payments voluntary. See *Poll: Union Members Overwhelmingly Oppose Union Boss Political Spending on 2010 Midterm Elections*, available at www.nrtw.org.

In Ohio’s 2010 elections, the seven largest contributors to Ohio policymakers and candidates were labor unions: The Ohio Alliance of Public School Employees, Ohio State Association of Plumbers & Pipefitters, SEIU Ohio State Council, Ohio Education Association, International Brotherhood of Electrical Workers, AFSCME, and AFL-CIO Sheetmetal Workers, respectively. See *The Path Remains Clear for Ohio’s New Legislators to Separate Government Employment from Public Employee Unions*, by Maurice Thompson, available at www.OhioConstitution.org.

Although union members and non-members may apply to recover funds spent on politics, they are rarely aware of their rights, the process is costly and burdensome, and union accounting methods typically attribute well over 90 percent of funds to things other than politics, due to ambiguity in accounting requirements. At the same time, becoming an objector results in publication of one’s identity, and ensuing harassment and intimidation.

Do other states protect these types of freedoms?

Yes. Currently, 22 states have enacted laws protecting rights similar to those protected by the Ohio Workplace Freedom Amendment. The most recent was Oklahoma, which enacted a similar amendment in 2001.

Is there evidence that it’s not just warmer weather driving Ohioans, jobs, and businesses to right-to-work states?

Yes. Several comprehensive studies have analyzed business and employment conditions in all counties on each side of shared borders between right-to-work and forced unionism states. While weather and other geographic factors are identical on each side of the border, economics are dramatically different: the number of jobs, private sector job growth, and wage growth fair better in counties in right to work states right across the border from counties in non-right-to-work states. See *The Location of Industry: Do States’ Policies Matter?* By Thomas J. Holmes.

How does the Workplace Freedom Amendment differ from Senate Bill 5 (“Issue 2” on the November 2011 ballot)?

Dramatically. The two measures share only two commonalities: first, they both involve labor law; second, Senate Bill 5 does include a provision that would have permitted certain public employees to work without being required to pay fair share fees, a result which this Amendment would also accomplish. However, Senate Bill 5 contains a host of additional measures. Finally, this Amendment would protect *all* public and private sector workers in Ohio, other than federal employees.

Does union membership decline once right to work laws are passed?

It’s unclear. After Oklahoma passed its Amendment, union membership did not decline: 6.8 percent of the workforce were members in 2000, and 6.8 percent were still members in 2003. See *Effect of Right to Work Laws on Employees, Unions and Business*, by John Cooper. However, economist Richard Vedder maintains “[i]t is clear that such laws are associated with significantly lower levels of union membership, which is why unions so strongly oppose them.” Other studies find that union membership decreases by 3 to 5 percent upon enactment of RTW. Union membership is approximately 6.7 percent in non-right-to-work states and 14.2 percent in forced unionism states.

What arguments can opponents of workplace freedom be expected to make?

In 2001, Oklahoma AFL-CIO President argued “we will not allow our wages to be cut along with less health care for our families.” However, Oklahoma was the only state in the nation to experience a dramatic increase in household income in 2002 (3.7 percent), while the number of Oklahomans covered by private insurance also dramatically increased. In Idaho, employee wages grew significantly in the 15 years after passage of right to work - - from below to well above the national average.

Unions also frequently argue that those that “opt out” of the union are “free-riders,” receiving the benefits of unions’ negotiated agreements without incurring the costs of funding those negotiations. However, unions are not required to represent all employees in a workplace unless they insist on maintaining “exclusive representation,” over the entire workplace - - unions may eliminate the “free rider” problem by negotiating on behalf of their members only. See Labor Management Relations Act, Section 301.

Does federal labor law prohibit this Amendment?

No. While federal labor law is currently quite broad, Section 14(b) of the Management Labor Relations Act specifically permits laws that prohibit membership in a union as a condition of employment. The constitutionality of such laws has been upheld by the United State Supreme Court in *Lincoln Federal Labor Union No. 19129 v. Northwestern Iron and metal Company* and *A.F. of L. v. American Sash & Door Co.*

How do we amend the Ohio Constitution?

Citizens may initiate constitutional amendments in Ohio through the following process:

- Once certified, proponents are free to gather signatures, and must submit an amount of signatures equivalent to ten percent of the number of Ohio citizens to have voted in the most recent election for governor, and must do so no later than 125 prior to the date of the election

upon which the proponents wish to place the measure on the ballot. *Section 1, Article II, Ohio Constitution.*

- For the November, 2012 elections, approximately 386,000 signatures must be submitted the first week of July of 2012.
- Submitted signatures need not all be valid: so long as the requisite number of signatures are submitted, the Secretary of State must count them, and then submit them to county boards of elections for verification. Proponents, under *current* Ohio law, may continue to gather signatures while this process is taking place, and then have ten additional days to gather and submit signatures once the Secretary of State indicates that less than the requisite number of signatures are valid.

For more information, see www.OhioConstitution.org, or contact Maurice A. Thompson, Director of the 1851 Center for Constitutional Law at (614) 340-9817, or MThompson@OhioConstitution.org