



February 17, 2023

***E-MAIL AND CERTIFIED MAIL***

Ms. Julie Kriegh, City Attorney  
City of Phoenix  
200 West Washington Street, 13<sup>th</sup> Floor  
Phoenix, AZ 85003  
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Re: Union Dues Deduction Revocation Restrictions

Dear Ms. Kriegh:

As you know, the Goldwater Institute is a public policy and public interest litigation organization, dedicated to upholding the constitutional rights of all citizens. I write to highlight alarming provisions found in the Phoenix City Code and several of the collective bargaining agreements between the City of Phoenix (“the City”) and various labor unions that infringe on the free expression and associational rights of City employees. The City appears to have also adopted policies and practices that exacerbate this unconstitutional activity. We request that the City immediately act to bring the Code, these agreements, and any policies or practices made pursuant to them, into compliance with federal and state law.

Phoenix City Code Section 2-214(A) provides in relevant part that “[p]ublic employees shall have the right to form, join and participate in any employee organization of their own choosing, *or to refrain from forming, joining, or participating in same.*” (emphasis added). At first glance, this section appears to protect the free expression and associational rights of City employees by allowing them to associate—or not associate—with whichever private labor organization they choose.

However, Section 2-214(D) of the Code unlawfully restricts when City employees may *disassociate* from a union and stop *participating* in its funding:

Any authorized employee organization shall be eligible, upon agreement with the public employer, to have its periodic membership dues deducted and collected by the public employer from the salaries of those employees who present signed cards,<sup>1</sup> in a form satisfactory to the public employer, authorizing the deduction of

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<sup>1</sup> Although the Code refers to “cards,” each of the City’s collective bargaining agreements refer to a City-provided dues deduction authorization form that must be “duly completed and signed

such dues. This deduction may be revoked by the employee at any time *during the first week in January, or the first week in July*, upon written notice of such revocation furnished to the public employer by the employee.

(emphasis added).

Relatedly, the City has entered into memoranda of understanding ( “MOUs”) with at least seven labor organizations: the Laborers’ International Union of North America, Local 777, AFL-CIO (“LiUNA” or “Unit 1”);<sup>2</sup> the American Federation of State, County, and Municipal Employees, Local 2384, AFL-CIO (“AFSCME 2384” or “Unit 2”);<sup>3</sup> the American Federation of State, County, and Municipal Employees, Local 2960, AFL-CIO (“AFSCME 2960” or “Unit 3”);<sup>4</sup> the Phoenix Law Enforcement Association (“PLEA” or “Unit 4”);<sup>5</sup> the Phoenix Fire Fighters Association, Local 493 (“PFFA” or “Unit 5”);<sup>6</sup> the Phoenix Police Sergeants and Lieutenants Association (“PPSLA” or “Unit 6”);<sup>7</sup> and the Administrative, Supervisory Professional & Technical Employees Association (“ASPTEA” or “Unit 7”).<sup>8</sup>

Although the agreement with ASPTEA expressly allows employees to revoke their membership dues deduction authorization “in writing ... *at any time during the year*,”<sup>9</sup> the remaining MOUs either mirror or reference the City Code restriction.<sup>10</sup>

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by the employee.” *See, e.g.,* Unit 1 MOU, *infra* n.2 at 10–11. However, it is unclear if in practice the City uses union-provided cards or provides its own form.

<sup>2</sup> *Memorandum of Understanding, 2021–2023 Between Laborers’ International Union of North America, Local 777, AFL-CIO and City of Phoenix, Representing Field Unit I Employees*, [tinyurl.com/bdhrwkp3](https://tinyurl.com/bdhrwkp3).

<sup>3</sup> *Memorandum of Understanding, 2021–2023, City of Phoenix and American Federation of State, County, and Municipal Employees, Local 2384, AFL-CIO, Representing Field Unit II Employees*, [tinyurl.com/2meptscj](https://tinyurl.com/2meptscj).

<sup>4</sup> *Memorandum of Understanding, 2021–2023, City of Phoenix and American Federation of State, County, and Municipal Employees, Local 2960, AFL-CIO, Representing Unit 3 Employees*, [tinyurl.com/ytr6v4xt](https://tinyurl.com/ytr6v4xt).

<sup>5</sup> *Memorandum of Understanding, 2021–2023, City of Phoenix and Phoenix Law Enforcement Association, Representing Unit 4 Employees*, [tinyurl.com/mubs8mcd](https://tinyurl.com/mubs8mcd).

<sup>6</sup> *Memorandum of Understanding, 2021–2023, City of Phoenix and Phoenix Fire Fighters Association, Local 493, Representing Unit 5 Employees*, [tinyurl.com/23jfmms8s](https://tinyurl.com/23jfmms8s).

<sup>7</sup> *Memorandum of Agreement, 2021–2023, City of Phoenix and Phoenix Police Sergeants and Lieutenants Association, Representing Unit 6 Employees*, [tinyurl.com/4tn5pfs5](https://tinyurl.com/4tn5pfs5).

<sup>8</sup> *Memorandum of Agreement, 2021–2023, City of Phoenix and Administrative, Supervisory Professional & Technical Employees Association (ASPTEA), Representing Unit 7 Employees*, [tinyurl.com/3xvutfu5](https://tinyurl.com/3xvutfu5).

<sup>9</sup> *Id.*, at Section 1-4, p. 4 (emphasis added). It is not entirely clear whether the agreement or the City Code govern here.

<sup>10</sup> *See* Unit 1 MOU, *supra* n.2, at Section 1-3(E)(1), p. 11 (“Authorization for membership dues deductions herein shall remain in effect during the term hereof unless revoked by the employee. *Revocation of deductions shall be accepted by the City only during the first week of July or*

We do not believe that the codified restrictions comport with federal or state law.

These provisions impermissibly restrict when and how an employee may terminate their union membership and halt the deduction of union dues from their paychecks. Currently, even if an employee revokes their consent, the City appears to continue deducting dues from each paycheck until the next bi-annual opt-out period commences, and potentially until the employee receives union consent. This is not only unfair and predatory—it is also unconstitutional.

As you are likely aware, in *Janus v. AFSCME*, 138 S. Ct. 2448, 2459–60 (2018), the United States Supreme Court held that compelling public employees to subsidize a union violates the First Amendment. The Court observed that, “[t]he **right to eschew association** for expressive purposes is ... protected.” *Id.* at 2463 (emphasis added) (citing *Roberts v. U.S. Jaycees*, 468 U. S. 609, 623 (1984) (“Freedom of association ... plainly presupposes a **freedom not to associate.**”) (emphasis added), and *Pac. Gas & Elec. Co. v. Pub. Util. Comm’n of Cal.*, 475 U.S. 1, 12 (1986) (plurality opinion) (“[F]orced associations that burden protected speech are impermissible.”)). Thus, the Court held that, “[n]either an agency fee *nor any other payment to the union* may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, *unless the employee affirmatively consents to pay.*” *Janus* 138 S. Ct. at 2486 (emphasis added). Such consent must be proven by “clear and compelling evidence.” *Id.* (citation and internal quotation marks omitted).

Arizona law contains even broader protections. *See, e.g., Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 282 ¶ 47 (2019) (a violation of First Amendment principles “necessarily implies” a violation of Arizona’s broader free expression principles). In particular, Arizona’s Right to Work laws—Arizona Constitution, article XXV and A.R.S. §§ 23-1301–07— forbid government entities from imposing “the requirement that any person participate in *any form or design* of union membership.” *AFSCME Local 2384 v. City of Phoenix*, 213 Ariz. 358, 367 ¶ 23 (App. 2006) (emphasis added).

The City’s dues deduction revocation restrictions force employees to remain union members and pay for union dues through payroll deductions even *after they have expressly revoked their consent*, until the next bi-annual opt-out week rolls around. An employee revocation is obviously evidence that an employee does not affirmatively consent to pay union

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*January to be effective the following payroll period.*” (emphasis added)); Unit 2 MOU, *supra* n.3, at Section 1-3(G)(1), p.10 (same); Unit 3 MOU, *supra* n.4, at Section 1-3(E)(2), p. 9 (same); Unit 4 MOU, *supra* n.5, at Section 1-3(F), p. 9 (citing Chapter 2, Article XVII (Employer-Employee Relations), Phoenix City Code); Unit 5 MOU, *supra* n.6, at Section 1-3(L), p. 7 (citing Ordinance G-3303). The agreement covering PPSLA appears to contain conflicting provisions. *Compare* Unit 6 MOA, *supra* n.7, at Section 1-3(L), pp. 8–9 (providing that deduction authorizations may only be revoked “in writing by the member *at times and in a manner established by the City*” (emphasis added)), *with* Section 1-4(A), p.9 (“In compliance with the Meet and Discuss ordinance, the City and Association agree that there will be no restrictions on unit employees from initiating or canceling membership in the Association.” (emphasis removed)).

dues. Additionally, the *City* bears the burden of proving affirmative consent, and mandating opt-out windows and requiring union authorization to stop dues deductions show that the City has not and cannot meet this burden of proof.

The City appears to have been aware of the potential illegality of these restrictions when the MOUs were drafted, as it attempted to shield itself from liability in all but the Unit 7 agreement.<sup>11</sup>

Of course, the City cannot immunize itself from constitutional requirements in an MOU. The City, instead, agreed to include these unconstitutional restrictions in the MOUs, which were approved by the City Council.<sup>12</sup> Moreover, the City expressly codified the deduction revocation restrictions. Those actions violate the First Amendment, the Arizona Constitution, and Arizona's Right to Work statutes.

In order to prevent ongoing and future unconstitutional activity, the City must immediately revoke or revise City Code Section 2-214, the aforementioned MOUs, any offending payroll deduction authorization form, and any other policy or procedure that imposes these unconstitutional conditions.

We also understand that collective bargaining negotiations are underway for the 2023–2025 MOUs. The City should ensure that the unconstitutional provisions identified above do not appear in any future labor agreements.

Our staff is available to discuss these matters with you at any time.

We appreciate your prompt and thoughtful consideration and look forward to receiving confirmation that the City has taken actions to bring the agreements and dues deduction form into compliance with the law.

Should you have any questions regarding this matter, please do not hesitate to contact me directly at [pjackson@goldwaterinstitute.org](mailto:pjackson@goldwaterinstitute.org) or by calling our main office at 602-462-5000.

Sincerely,



Parker Jackson  
Staff Attorney  
Scharf-Norton Center for  
Constitutional Litigation at the  
Goldwater Institute

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<sup>11</sup> See, e.g., Unit 1 MOU, *supra* n.2, at Section 1-3(E)(3), p. 11 (“The City assumes no liability on account of any actions taken pursuant to this section.”).

<sup>12</sup> See, e.g., City Council Resolutions 21913, 21922, 21923, 21914, and 21915.

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cc: (via email only)

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