

HR 106

URGING THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE'S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO "FREE RIDE".

HOUSE RESOLUTION

URGING THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE'S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO "FREE RIDE".

1 WHEREAS, Hawaii's collective bargaining in public
2 employment law, chapter 89, Hawaii Revised Statutes, was enacted
3 to promote labor-management harmony in the public sector by:

- 4
- 5 (1) Establishing guidelines for employment relations
6 relating to wages, hours, and working conditions;
7
- 8 (2) Providing a method for dealing with disputes and work
9 stoppages; and
- 10
- 11 (3) Maintaining a favorable political and social
12 environment; and
13

14 WHEREAS, the policy to promote harmonious and cooperative
15 relations between government and its employees rests on the
16 right of public employees to organize for the purpose of
17 collective bargaining in accordance with article XIII, section
18 2, of the Hawaii State Constitution; and
19

20 WHEREAS, in the interest of labor peace and viability of
21 the collective bargaining enterprise, the Legislature has
22 consistently required all public employees in bargaining units
23 to bear the pro rata costs of their duly-elected exclusive
24 representatives' collective bargaining function, in accord with
25 *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 97 S. Ct. 1782, 52
26 L.Ed.2d 261 (1977) (allowing public sector agency fees) (*Abood*);
27 and
28

29 WHEREAS, in *Janus v. American Fed'n of State, County, and*
30 *Mun. Employees, Council 31*, 851 F.3d 746 (7th Cir. 2017), cert.
31 granted, 138 S.Ct. (Mem), 198 L.Ed. 2d 780 (2017), (*Janus*) the



1 petitioner is asking the United States Supreme Court to overrule
2 *Abood*, and the Court has accepted the case, arguments have been
3 submitted and presented, and a decision is expected by the end
4 of June, 2018; and

5
6 WHEREAS, most commentators expect that *Abood* will be
7 overruled and traditional agency fees will be banned; and

8
9 WHEREAS, should the United States Supreme Court strike down
10 laws requiring the payment of agency fees by public sector
11 employees, such a ruling would fundamentally undermine the
12 Legislature's consistent efforts to bar "free riders", and
13 ensure labor management peace; undercut the collective
14 bargaining representative's ability to collect resources from
15 its bargaining unit; and greatly diminish public employees'
16 ability to negotiate with management thus causing the government
17 to lose the advantages envisioned under the collective
18 bargaining in public employment law; and

19
20 WHEREAS, the intent of the Legislature is to ensure that
21 public employees are able to effectively bargain collectively
22 with their public employers by establishing a mechanism,
23 consistent with the United States Constitution, that provides
24 exclusive bargaining representatives with the resources
25 necessary to adequately represent public employees, and removes
26 economic incentives to "free ride" so that Hawaii law will not
27 be biased for or against employee membership in the bargaining
28 unit; and

29
30 WHEREAS, the United States Supreme Court may issue a ruling
31 in *Janus* after the Legislature has adjourned, leaving public
32 sector employees and the State and counties of Hawaii uncertain
33 of their rights without immediate legislative recourse; and

34
35 WHEREAS, under such circumstances the Hawaii Labor
36 Relations Board, or other agencies or judicial bodies, may be
37 called upon to interpret, adapt, or conform chapter 89, Hawaii
38 Revised Statutes, to the result in *Janus*, through rules or
39 decisions, perhaps pending later legislative action; now,
40 therefore,



1 BE IT RESOLVED by the House of Representatives of the
2 Twenty-ninth Legislature of the State of Hawaii, Regular Session
3 of 2018, that the Hawaii Labor Relations Board, and other
4 concerned agencies or judicial bodies, are urged to take notice
5 of this body's intent to enable exclusive representatives to
6 maintain financial viability and organizational capacity and
7 effectively represent public employees, and to remove or reduce
8 financial incentives for employees to "free ride"; and
9

10 BE IT FURTHER RESOLVED that the Hawaii Labor Relations
11 Board is requested to submit a report of its findings and
12 recommendations on the status and consequences of *Janus*,
13 including any proposed legislation, to this body no later than
14 twenty days prior to the convening of the Regular Session of
15 2019; and
16

17 BE IT FURTHER RESOLVED that certified copies of this
18 Resolution be transmitted to the Governor, Chairperson of the
19 Hawaii Labor Relations Board, and Chief Justice of the Supreme
20 Court of Hawaii.
21
22
23

OFFERED BY:

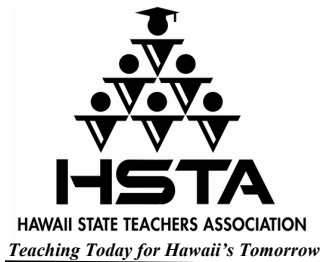


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HR 106

TESTIMONY



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TESTIMONY BEFORE THE HOUSE COMMITTEE ON
LABOR AND PUBLIC EMPLOYMENT

RE: HCR 122/ HR 106 - URGING THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE'S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO "FREE RIDE"

TUESDAY, MARCH 27, 2018

COREY ROSENLEE, EXECUTIVE DIRECTOR
HAWAII STATE TEACHERS ASSOCIATION

Chair Johanson and Members of the Committee:

The Hawaii State Teachers Association **supports HCR 122/HR 106**, urging the Hawai'i Labor Relations Board and other concerned agencies or judicial bodies to take notice of the Legislature's intent to enable exclusive representatives to maintain financial viability and organizational capacity, and effectively represent public employees, and to remove or reduce financial incentives for employees to "free ride."

Labor rights are human rights. This resolution clarifies the Legislature's intent to protect collective bargaining in light of *Janus v. AFSCME*, a case that could alter the application of chapters 76 and 89, Hawai'i Revised Statutes. In *Janus v. AFSCME*, the petitioners asked the United States Supreme Court to determine if *Abood v. Detroit Board of Education* should be overruled and public-sector agency shop arrangements invalidated under the First Amendment, and, additionally, if the First Amendment prohibits the practice of requiring public employees to affirmatively opt-out of subsidizing nonchargeable speech, rather than to affirmatively consent to such speech.

If the Supreme Court strikes down laws requiring the payment of union dues by public sector employees, the ruling would fundamentally undermine Hawai'i's dedication to labor management peace by constraining collective bargaining representatives' ability to collect resources from their members and, in turn, diminishing public employees' ability to negotiate with management and represent their members' interests. Put simply, the ability hardworking families to fight for fair treatment from their employers would be endangered and their livelihoods would be placed at risk.

Collective bargaining is especially important to public school teachers. It is in the best interest of both the employer and the union to ensure that bargaining occurs in a way that supports an employee's ability to enhance their professionalism, leads to a workplace free from health and safety risks, and is conducted in a fair and equitable manner. Our state's promise to protect collective bargaining is urgent under the pending threat of *Janus v. AFSCME*, which jeopardizes the union workforce that forms the heart of Hawai'i's economy.

To preserve the islands' longstanding devotion to the protection of workers' rights, the Hawaii State Teachers Association asks your committee to **support** this resolution.

HR 106

**LATE
TESTIMONY**

LATE

LATE

HR-106

Submitted on: 3/26/2018 9:54:39 PM

Testimony for LAB on 3/27/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcella Alohalani Boido	Individual	Support	No

Comments:



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

March 27, 2018

H.C.R. 122 and H.R. 106 – URGING THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE’S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO “FREE RIDE”

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO does not dispute the preamble of H.C.R. 122 and H.R. 106 nor the potential adverse impact of the U.S. Supreme Court case, *Janus v. AFSCME*, however, we find H.C.R. 122 and H.R. 106 to be unnecessary and therefore respectfully request that the Committee defer both measures.

In *Janus v. AFSCME*, the petitioner is asking the United States Supreme Court to overrule decades of past precedence by prohibiting public sector unions from collecting agency fees. While we can hope that the Supreme Court will uphold its 1977 *Abood v. Detroit Board of Education* decision, we must – and have already begun to – prepare for the worst. However, even in the worst circumstances, it is wholly inappropriate for the Hawaii Labor Relations Board (HLRB) to be charged with submitting a report of its recommendations, including proposed legislation, on the status and consequences of the *Janus v. AFSCME* decision. As delineated in Ch. 89-5, Hawaii Revised Statutes, the HLRB is empowered to adjudicate disputes and interpret collective bargaining law, therefore mandating that the HLRB also make recommendations and propose legislation blurs the line of the balance of power. Additionally, we trust that since *Janus v. AFSCME* has already garnered national and local media attention, it is unnecessary for the Legislature to urge the Hawaii Labor Relations Board and other concerned agencies or judicial bodies to take notice of the Legislature’s intent to maintain financial viability and organizational capacity. Lastly, should the Legislature feel compelled to preemptively react to *Janus v. AFSCME*, it should rest assured that the HLRB already has the authority to conduct studies and adopt rules relative to the exercise of its powers.

It is for these reasons cited that we respectfully request that the Committee defer both H.C.R. 122 and H.R. 106.

Respectfully submitted,

Randy Perreira
Executive Director