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Brandon Bradley,
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Federal Labor Relations Authority
1400 K Street NW, Suite 200
Washington, D.C. 20424-0001

RE: Request for Comments on FLRA Docket No. 0-MC-33, Miscellaneous and General Requirements

Dear Mr. Bradley,

The Federal Labor Relations Authority's proposed rulemaking flies in the face of both the text and purpose of the Federal Service Labor-Management Statute (the Statute). The Statute requires agencies to deduct union dues from the paychecks of employees who request such payments and provides that dues allotments shall be irrevocable for a period of one year. The Authority now proposes to prevent employees from canceling dues allotments except during short annual window periods (Miscellaneous and General Requirements, 2022). The plain text of the Statute precludes the Authority's proposed interpretation. It is also bad policy.

The Statute guarantees federal employees "the right to form, join, or assist any labor organization, *or to refrain from any such activity,* freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right" (5 U.S.C. § 7102) (emphasis added). Congress authorized the Authority to "carry[] out the purpose of" the Statute (5 U.S.C. § 7105(a)). The Authority's proposal instead erects regulatory roadblocks to employees trying to exercise their statutory right not to pay union dues. It would strain federal employees' budgets, force them to subsidize speech they oppose, and reduce the pressure on unions to crack down on corruption. The Authority should reject this proposed rulemaking.

Statutory Text Precludes FLRA's Proposal

FLRA case law historically prevented federal employees from canceling payroll dues deductions except during confusingly-defined one-year intervals (or "window periods") around the anniversary of when they initially authorized union dues deductions (*U.S. Army, U.S. Army Materiel Development and Readiness Command, Warren, Michigan*, 1981) (*Army*). In 2020, the Authority revisited this case law and issued both a General Statement of Policy or Guidance (policy statement) and a rule that allowed federal employees to cancel dues payments any time

after the initial irrevocability year. The Authority now proposes to replace both the policy statement and rule with a regulatory requirement that employees may only cancel dues allotments during annual window periods. The Authority effectively proposes codifying the *Army* restrictions into its regulations.

This proposal does not take the relevant statutory text into consideration. The Statute provides that:

> If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year (5 U.S.C. § 7115(a)).

As the FLRA previously and correctly found, this statutory text is clear. It makes no reference whatsoever to yearly intervals or window periods. The first sentence says that employees can choose to have union dues deducted directly from their paychecks through federal government payroll services via a written assignment and that such requests "shall [be] honor[ed]" by the agency and an appropriate deduction made. The second sentence says that such services will be provided without cost. The third sentence says, "any such assignment may not be revoked for a period of 1 year." Congress notably described this irrevocability period as "a period of 1 year"—singular—not years, plural.

The plain text of § 7115(a), therefore, speaks in unambiguous terms of a dues assignment that may not be revoked for a single year. As the Authority explained,

> The provision says that an "assignment may not be revoked for a period of [one] year," and such wording governs only one year because it refers to only "[one] year." Further, it would be nonsensical to conclude that the one-year period under § 7115(a) is not the first year of an assignment. For example, we could not reasonably find that § 7115(a) prevents the revocation of an assignment during its second year, but not its first year. And because the provision says that it limits revocations for "a period of [one] year," it does not limit revocations for multiple periods of one year (*Office of Personnel Management*, 2020).

Basic principles of statutory construction confirm this reading of the Statute. The issue of dues revocations had previously been governed by executive order (Exec. Order 11491). Notably, that order provided that an employee could "revoke his authorization at stated six-month intervals." If Congress had intended the Statute to contain a similar limitation, only allowing employees to revoke dues assignments at yearly intervals, it would have stated an employee may only "revoke his authorization at stated *yearly* intervals" or similar such language. Strikingly, however, Congress used markedly different language referring to "a period of 1 year" of irrevocability.

Congress was aware of the limitations on revoking dues allotments under the executive order regime. The Statute followed its predecessor executive orders in many respects. But in § 7115(a), Congress deliberately used different language that made it easier for federal employees to refrain from supporting labor organizations. It did so as part of a statute whose stated purpose was to strengthen federal employees' rights. Canons of statutory construction call for treating Congress' decision to use significantly different language in the Statute as a deliberate policy choice: "if the legislature amends or reenacts a provision other than by way of a consolidating statute or restyling project, a significant change in language is presumed to entail a change in meaning" (Scalia & Garner, 2012, pp. 256-260). The FLRA's proposed new interpretation of § 7115(a) as referring to yearly intervals flies in the face of the Statute's plain text and canons of statutory construction.

Courts Have Rejected the Authority's Proposed Interpretive Framework

As support for its proposed 180-degree policy reversal, the FLRA cites dicta from a 40-year-old Supreme Court decision noting that in passing the Statute, "Congress unquestionably intended to strengthen the position of federal unions" (*Bureau of Alcohol, Tobacco & Firearms v. FLRA*, 1983). But the Authority ignored the Supreme Court's admonishment that "no legislation pursues its purposes at all costs. Congressional intent is discerned primarily from the statutory text" (*CTS Corp. v. Waldburger*, 2014).

The Statute carefully balances the rights of workers, unions, and agencies. Reading it as a one-way ratchet that always favors federal unions—even where, as here, their interests are directly adverse to those of federal employees—would be an arbitrary and capricious construction. In fact, as the courts have recognized, the Statute "serve[s] a variety of purposes," including "strengthen[ing] the authority of federal management to hire and discipline employees" while protecting "the right of employees to organize (and) bargain collectively" (*Dep't of Def. v. FLRA*, 1981).

Moreover, specific statutory text protects the rights of workers "to form, join, or assist any labor organization, *or to refrain from any such activity,* freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right" (5 U.S.C.§ 7102) (emphasis added). Indeed, the D.C. Circuit has held that the Statute's dues-revocation provision, 5 U.S.C § 7115(a), "was designed for the primary benefit and convenience of the employee" (*AFGE, Council 214, AFL-CIO v. FLRA*, 1987). As a matter of law, the notion that the Statute's dues-revocation provisions primarily exist to benefit federal unions is false.

The new FLRA majority cites the Statute's legislative history and claims that the previous majority "decline[d] to consider" it. That, too, is false. The FLRA majority took express note of the Statute's legislative history (Miscellaneous and General Requirements, 2020). However, the previous FLRA majority noted correctly that the approach to legislative history reflected in *Army*—where ambiguous legislative history takes precedence over plain text—has been roundly rejected by the Supreme Court. As the Court explained in *Ratzlaf v. United States*, "we do not resort to legislative history to cloud a statutory text that is clear" (1994).

Further, the FLRA had this analysis, to which the Notice of Proposed Rulemaking offers no response whatsoever:

> Moreover, the legislative history of section 7115(a) is not nearly as supportive of *Army*'s interpretation as that decision suggested. *Army* began with the observation that dues deductions were revocable at six-month intervals under Executive Order 11,491. Then, examining congressional committee reports, *Army* concluded that the Statute was intended to provide greater union security than Executive Order 11,491, but not as much security as an ''agency shop.'' Finally, *Army* concluded that section 7115(a) ''must'' be interpreted to allow revocations only at one-year intervals. 7 FLRA at 199. The logical flaw in that reasoning is clear. Whereas Executive Order 11,491 stated explicitly that dues-deduction assignments must allow employees to ''revoke [an] authorization at stated six month intervals,'' *Army*, id. at 196 (emphasis added), section 7115(a) of the Statute does not mention intervals at all. Rather, it mentions irrevocability for ''a period of [one] year.'' 5 U.S.C. 7115(a) (emphasis added). Nevertheless, based solely on perceived policy goals gleaned from legislative history, *Army* improperly grafted an interval-based revocation restriction onto the wording of section 7115(a). We reject that mode of statutory interpretation, and we reject the portions of other Authority decisions that followed *Army* in adhering to that flawed interpretive method (Miscellaneous and General Requirements, 2020).

Adopting a method of statutory construction that has been repeatedly rejected by the Supreme Court to advance a policy that directly undermines an express statutory right would be arbitrary and capricious.

Window Periods Frustrate Employee Rights

The FLRA's proposal would frustrate federal employees' ability to refrain from supporting federal labor organizations. Very few federal employees remember when they first authorized union dues deductions. This is not a memorable event in the same way birthdays, graduations, and anniversaries are. Consequently, most dues-paying union members do not know when they may lawfully cancel their dues payments. Even if they are aware, personal circumstances may change, and they may want—or need—to stop paying dues immediately, not up to 11 months later.

In 2019 and 2020, the FLRA received numerous comments from federal workers complaining of arbitrary and unjustifiable hurdles that they encountered when seeking to cancel their union dues. Many commenters wrote of the difficulties they encountered when they attempted to revoke their dues assignments because there were short revocation windows and because they often did not know the anniversary of their assignments. Some wrote that their union was unwilling to provide this information and/or assist in processing requests. Federal employees explained that the prior rule had the practical effect of forcing them to pay union dues against their will.

The FLRA's current rule reflects the common-sense and basic common decency to which federal workers are entitled: "upon receiving an employee's request to revoke a previously authorized dues assignment, an agency must process the revocation request as soon as administratively feasible" (5 C.F.R. § 2429.19). After the FLRA announced its new rule, relieved federal workers across the country sought to take advantage of their new freedom. Now, just two years later, the FLRA proposes to withdraw this newfound freedom from them arbitrarily.

Prioritizing Union Interests Over Employees' Rights is Arbitrary and Capricious

Implicitly admitting that *Army* and the Statute's legislative history are pretexts, the new FLRA majority goes on to describe the real basis for its proposed rulemaking—that forcing unwilling employees to continue to pay union dues benefits unions institutionally. The Authority phrases union interests in terms of helping their financial planning and enhancing their bargaining position. The FLRA majority boldly declares that a preference "to strengthen the position of federal unions" might justify this rulemaking (Miscellaneous and General Requirements, 2022).

But the FLRA's proposed rulemaking would aid the unions' financial planning at the expense of the financial planning of federal workers, now stretched thin by runaway inflation and living costs. In previous public comments on this topic, the FLRA heard from federal employees who noted that there were times when union members needed to withdraw from membership (even temporarily) because of personal financial circumstances. Now, the FLRA appears poised to discard the pleas of ordinary workers for their own basic financial security to advance the institutional interests of well-funded federal unions.

Only an FLRA captured by a party it is supposed to regulate—federal unions—would consider deleting a requirement that a dues revocation request be processed as soon as administratively feasible. Federal employees should not have to choose between feeding their families and supporting well-compensated union officials. The financial planning of union officials cannot, and must not, take precedence over the financial planning of hard-working federal employees and their families. Employees who wish or need to keep more of their paychecks (for example, to help pay for groceries during a time of high inflation) should not have to fight their union, their Human Resources office, and the very agency charged with protecting their rights—the FLRA.

The Statute expressly protects employees' right to refrain from supporting a labor organization and makes it an unfair labor practice for an agency or labor organization to interfere with or restrain employees' exercise of this right (5 U.S.C. §§ 7102, 7116). The FLRA's updated regulations reflect this statutory directive (5 C.F.R. § 2429.19).

Unfortunately, in many cases, unions have prevented their members from freeing themselves from undesired financial burdens based on window periods contained in old collective bargaining agreements. And the Office of Personnel Management (OPM) has not yet updated the SF 1187 dues assignment forms to reflect the FLRA's decisions protecting employee rights. But the fact that workers were hindered from enjoying their new freedom is not—as the National Treasury Employees Union (NTEU) proposes—a reason for taking that freedom back from them (Miscellaneous and General Requirements, 2022). OPM should simply revise the SF 1187 to reflect the FLRA's current rule. Bureaucratic delay and/or incompetence in another agency is not

a rational basis for new rulemaking undermining employee rights. The FLRA's potential 180-degree reversal of its prior pro-worker position—and the detailed factual record and numerous public comments that supported it—would be the definition of arbitrary and capricious administrative decision-making.

First Amendment Concerns

The FLRA's proposed new interpretation also creates serious First Amendment concerns. The Supreme Court has found that compulsory union dues violate the First Amendment by forcing an employee to financially support a union's expressive activities (*Janus v. AFSCME*, 2018). The Authority's 2019 rulemaking was prompted in part by *Janus*, and First Amendment concerns were prominently noted by concurring FLRA Member Abbott (*Office of Personnel Management*, 2020). It is essential to the public interest and to fundamental First Amendment freedoms that union members be able to stop financially subsidizing unions that they no longer support immediately.

The union petition for rulemaking downplays these First Amendment concerns by arguing that standard-form dues assignment contracts with yearly revocation provisions are "voluntary, binding contracts" (Miscellaneous and General Requirements, 2022). But that reasoning is circular: they are only binding if the FLRA's rule is revoked (5 C.F.R. § 2429.19). Further, the FLRA's previous public comments revealed that many federal employees had difficulty discovering the yearly dues-revocations windows, potentially locking them into paying dues for many years against their will. It is not at all clear that the First Amendment allows the Authority to implement policies designed to frustrate federal employees' ability to exercise their First Amendment rights. And given that the SF 1187 specifies a yearly revocation period, they are not truly negotiated between the agency and the employee in any meaningful sense. The FLRA should respect the statutory and constitutional rights of federal workers to not subsidize union speech that they oppose. The Authority should reject this proposed rulemaking.[1] [2]

[1] If the FLRA proceeds with its rulemaking, Member Kiko's suggestion that employees have at least one full month each year—occurring at the same time for all federal employees—in which to terminate their dues withholding would be vastly superior to going back to a system based around anniversary dates that vary for each employee. This approach would be more convenient for both employees and agencies. It would at least solve the problem of federal employees having difficulty discerning when they initially joined the union and thus not knowing when they can lawfully submit rescission forms. And NTEU's petition argued that "process[ing] revocations all at once … is more efficient than processing them one by throughout the year" (Miscellaneous and General Requirements, 2022). This approach would also promote efficient government by eliminating the need for agencies to verify when employees historically submitted SF 1187 forms. There is no public policy basis for using different annual window periods for each employee, especially when unions argue this procedure increases their administrative burdens. The only apparent motivation for this approach is to make it harder for employees to refrain from supporting a labor organization by making dues cancellations more difficult. That is not a statutorily permissible objective and may not be constitutionally permissible.

[2] If the Authority proceeds with this rulemaking, it should also expressly require agencies to hold SF 1188 forms submitted outside the window period in abeyance and process them when the window period opens rather than rejecting the forms altogether and requiring the employee to resubmit a new form during the window period—typical agency practice under *Army*. This approach satisfies all the concerns NTEU raised with the 2020 rule, enabling unions to engage in long-term financial planning and process forms all at once rather than throughout the year. It would reduce administrative burdens on agencies, requiring them to receive and process SF 1188 forms only

Union Corruption is also a Relevant Consideration

Corruption within the federal union movement reinforces these First Amendment and public policy concerns. Federal workers have a strong interest in not being forced to subsidize corrupt institutions. In a recent report, the America First Policy Institute documented serious demonstrated and alleged corruption within the American Federation of Government Employees (AFGE), the largest federal union. AFGE National President J. David Cox resigned in 2020 amidst charges of widespread sexual harassment, sexual assault, racism, and misuse of union funds. The allegations include charges that Cox forced his limousine driver to allow Cox to perform fellatio on him (Sherk & Sagert, 2023, pp. 5-6). AFGE commissioned Working IDEAL to conduct an independent investigation into Cox's conduct. That investigation did not examine the charges related to the limousine driver but looked into and substantiated many of the other charges (Working IDEAL, 2020, pp. 17-18). Bloomberg News also reports that Cox's behavior was widely tolerated within the union:

> Staff say Cox's conduct was well-known within the union. "It was the worst-kept secret at AFGE," says Bre Andrews, a former political organizer there. In front of co-workers, Cox suggested that being photographed with his arms around two female staffers was a turn-on, according to former employees. He also allegedly asked male staffers whether they shaved their crotches. One of AFGE's former vice presidents, Jane Nygaard, says Cox commented on the size of her breasts in front of fellow AFGE officers. "Sometimes when people get in a position of power, they think they can do whatever they want," she says …
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> Attempts to raise the issue internally had little effect, current and former employees say. One recalls referencing concerns about Cox's behavior during a conversation with a union vice president, who responded by covering both ears to signal the discussion was over (Eidelson, 2019a).

Unfortunately, AFGE's corruption problems appear to go beyond Cox. The independent investigators noted that:

> During our investigation, witnesses also reported a range of past incidents at AFGE concerning inappropriate conduct by other individuals besides Cox, including sexual comments and conduct, allegations of racial and religious bias, and inappropriate and offensive social media postings, among other concerns. These allegations are outside the specific scope of this report, which focuses on Cox's conduct.

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once per employee instead of twice (or more) times. And it would facilitate employees' ability to exercise their statutory right to refrain from supporting a labor organization by eliminating procedural barriers to rescinding dues allotments. Under this approach, employees would no longer be required to determine their individual window period and submit their SF 1188 in that window. They could submit it at any time and know that it would take effect whenever their window period opened. The only apparent motivation for letting agencies reject SF 1188 forms submitted outside the window period—rather than hold them in abeyance—is to make it harder for employees to cancel dues allotments. The Authority has the authority to require agencies to hold SF 1188 forms in abeyance rather than reject them. If the Authority reinstates window periods, it should at least protect employees' statutory rights by requiring agencies to hold SF 1188 forms in abeyance until the window period opens.

> Many witnesses reported that Cox and other senior leaders would joke about sex workers, adult entertainment, sex, physical appearance, and other unprofessional topics. This behavior also included Cox bringing staff to adult entertainment venues or conducting AFGE business at such establishments (Working IDEAL, 2020, pp. 19, 30).

AFGE officials have also alleged that many other senior AFGE officials either engaged in corrupt conduct, covered it up, or both. For example, AFGE officials have alleged current AFGE National President Everett Kelly was aware of Cox's corruption and helped cover it up. They also allege AFGE has settled at least three sexual harassment complaints against Kelley (Sherk & Sagert, 2023, pp. 7-8).

AFGE officials also allege that members of the union's National Executive Council (NEC) turned a blind eye to sexual harassment and openly used racist remarks. A former AFGE local president has testified under oath that she heard an AFGE NEC member repeatedly refer to African American AFGE officers as SMBs, including once at an NEC meeting. She later learned that this acronym was a racist code for "Simple Minded Blacks" (Sherk & Sagert, 2023, pp. 8-9). Another AFGE member told Bloomberg News about her experience reporting sexual harassment by a senior union official:

> In 2015, Amber Westbrook, an AFGE member at the time, says that Rosendo Rocha, the president of her local chapter, told her that sex was the way for women to get ahead at the union and demanded to have adjoining hotel rooms at a conference. When she told the general counsel's office, they asked her follow-up questions, but "took no action and provided no explanation," she says. "I contacted and filed complaints with the appropriate officials that were supposed to have my back."
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> Instead, Dorothy James, a national vice president [an NEC member], told Westbrook, in an email reviewed by Bloomberg, she was ineligible for a union position because she didn't "have a positive working relationship with the Local President" (Eidelson, 2019b).

Westbrook has repeated these charges in court filings (Doe #1 v. Am. Fed'n of Gov't Emps Second Amended Complaint, 2020, ¶¶ 175-177, 772-802).

Looking beyond individual reports of wrongdoing, AFGE is also the most corrupt union in the United States based on corruption convictions. AFGE has by far the highest corruption rate (federal corruption convictions per 100,000 members) of any U.S. union. AFGE represents just 2% of unionized workers nationwide but accounts for 1-in-10 federal union corruption convictions over the past decade. AFGE has placed over three dozen of its local chapters into trusteeship because of corruption or financial malpractice during this period (Sherk & Sagert, 2023, pp. 2-4). The AFPI and Working IDEAL reports are included as attachments to this comment to document the scope of alleged and demonstrated corruption within AFGE.

Corruption Concerns Argue Against Authority's Proposal

Union corruption concerns argue against making it harder for federal employees to stop paying union dues. Union members victimized by corruption justifiably feel outraged by their union's

conduct. As both a matter of First Amendment principles and basic decency, federal employees should not be forced to fund the salaries of union officials who engage in such behavior.

Federal employees who believe in racial equality but learn their senior union officials habitually denigrate non-whites should be free to stop funding inveterate racists immediately. No federal employee of Pakistani descent, for example, should be required to unwillingly pay the salary of a union president who derides Pakistanis as "sand n***ers" (Sherk & Sagert, 2023, p. 6). Federal employees who believe women should not be treated as sex objects should not be forced to continue paying dues to an organization that conducts official business at strip clubs. And victims of sexual abuse and their family members should not be forced to continue to fund abusers. For example, Annette Wells—the mother of the limousine driver whom Cox allegedly assaulted—is a longstanding AFGE member. She has publicly described how Cox's actions affected her family:

> I knew that something had happened to my son … He was somewhat in denial, and was very upset discussing the things that had happened to him. I knew about the abuse for a while, but I didn't know it was the president of my national union.[] To find out that I was paying all this money, faithfully paying dues to my union, while [Cox] was abusing my son, was devastating for me, my son, my husband, and my family (Russell, 2020).

Under the Authority's proposal, federal employees like Wells, whose families were victimized by union officials, would be forced to continue financially supporting those union officials for up to a year—longer if they cannot ascertain their individual window period. That is both capricious and unconscionable.

Proposal Undermines Union Standards of Conduct

The Authority's proposed regulation also directly undermines a Congressional goal expressed in the Statute. Congress set high standards of conduct for federal labor organizations. The Statute prohibits agencies from collectively bargaining with corrupt labor organizations and also prohibits the Authority from granting exclusive recognition to such an organization (5 U.S.C. §§ 7111(f), 7120(a)). While the Statute strengthened federal unions, Congress had little tolerance for the corruption that has historically plagued many private-sector labor unions.[3]

However, the Statute's anti-corruption enforcement mechanisms are difficult to use in practice. Under existing precedent, the Authority will not investigate union corruption in the first instance. Instead, an outside entity—such as the Department of Labor—must make a final determination that the organization is corrupt. Only then will the Authority undergo decertification proceedings (*Division of Military and Naval Affairs, New York National Guard*, 1997). Despite AFGE's high-profile corruption problems, a search of published Authority decisions shows the Authority has never decertified a union for being subject to "corrupt influences." The Statute's external anti-corruption safeguards have proven largely ineffective.

[3] Union corruption was a significant public policy concern in the 1970s. For example, International Brotherhood of Teamsters President Jimmy Hoffa disappeared in 1975—and was widely presumed to have been murdered by the mafia—just three years before Congress passed the Statute.

The Authority's 2020 regulation—which made it easier for union members to stop paying dues—put internal pressure on unions to police their own corruption. If they do not, dissatisfied members can immediately quit and stop paying union dues. Department of Labor reports show many AFGE members appear to have responded to their union's scandals in exactly this manner.

On December 31, 2019, AFGE reported 299,000 active members (Office of Labor-Management Standards, 2020, Schedule 13). A year later—after Cox's resignation, Working IDEAL substantiating many of the charges against him, and the Authority revising its dues regulations—AFGE reported only 283,000 active members (Office of Labor-Management Standards, 2021a, Schedule 13). By the end of 2021, AFGE's active membership dropped further to 276,000 workers (Office of Labor-Management Standards, 2022, Schedule 13). As a result, AFGE National Headquarters' annual per-capita membership tax receipts fell by 9% over this period, dropping from $79.3 million to $71.7 million (Office of Labor-Management Standards, 2020, Statement B; Office of Labor-Management Standards, 2022, Statement B). AFGE's membership continued to fall in 2021 despite the Biden Administration's widely-touted efforts to promote federal union organizing (Wagner, 2023).[4]

Making dues recissions easier pressures unions not to tolerate corruption. The Authority's proposed regulation would reduce this financial pressure by making it much more difficult for dissatisfied employees to "vote with their feet" and stop supporting an organization they perceive to be corrupt.

Organizations respond to financial incentives. This regulation would decrease the pressure on AFGE and other federal unions to combat corruption. It would similarly reduce pressure on them to police other forms of misconduct, such as sexual harassment and bigotry. While it would be desirable if federal unions did not need these incentives, AFGE's recent scandals demonstrate this is not the case. The Authority should not adopt an interpretation of § 7115(a) that undermines the high standards of conduct Congress intended for federal labor organizations.[5]

Conclusion

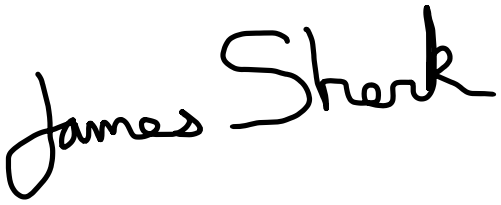
The Authority's proposed regulation adopts an interpretation of § 7115(a) that cannot be squared with the plain text of the Statute. The Supreme Court has repudiated the mode of statutory interpretation the Authority relied on in *Army* for its prior construction. As Justice Elena Kagan has explained, "we are all textualists now." The Authority's 2020 regulation and policy statement rightly reflected the plain meaning of the text Congress enacted.

[4] AFGE's falling dues income does not appear to stem from factors affecting the broader federal union movement during this period (for example, increased remote work during the COVID-19 pandemic potentially making it harder for unions to recruit new members). NTEU is the second-largest federal employee union. NTEU's dues receipts increased from $29.5 million to $31.0 million between the end of 2019 and the end of 2021 (Office of Labor-Management Standards, 2019, Statement B; Office of Labor-Management Standards, 2021b, Statement B).

[5] If the Authority proceeds with the current rulemaking, it should at least include a provision allowing employees to immediately cancel dues payments following allegations of corruption, racism, or other misconduct by union officials.

In addition to being unlawful, the Authority's proposal to restrict dues rescissions is bad policy. It makes it needlessly confusing for employees to exercise their statutory rights, strains federal employees' budgets, increases administrative burdens on agencies, forces employees to continue subsidizing organizations and speech they abhor, and reduces the pressure on unions to root out corruption. The Authority should continue to let federal employees stop paying union dues when they choose—not when federal union officials would prefer they do.

Sincerely,



James Sherk
Director, Center for American Freedom
America First Policy Institute

Enclosures (2):

James Sherk and Jacob Sagert, "AFGE Corruption Warrants Investigation," America First Policy Institute, January 13, 2022

Working IDEAL, "Report of the Independent Investigation Into Allegations of Harassment and Related Misconduct Against J. David Cox," March 16, 2020.

CC: Susan Grundmann, Chair
Colleen Kiko, Member

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