

**Testimony on the Impact of *Janus v. AFSCME* on Women & Women of Color
By Amal Bass, Staff Attorney, Women’s Law Project
Before the Women and Girls of Color Subcommittee
Of the Pennsylvania Legislative Black Caucus**

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Thank you to Representative Cephas and the Women and Girls of Color Subcommittee for inviting me to present this testimony. I am Amal Bass, and I am a staff attorney at the Women’s Law Project, a nonprofit, legal advocacy organization based in Philadelphia and Pittsburgh that seeks to advance the legal status of women and girls through impact litigation, public policy advocacy, community education, and individual counseling.

I am here today to talk about black women’s equal pay and the impact of the U.S. Supreme Court’s decision in *Janus v. AFSCME Council 31*. The *Janus* lawsuit was funded by corporate interests, and the Supreme Court’s decision overturns forty years of precedent, undermining the stability of public sector unions that have served as an equalizing force in our society. In Pennsylvania, women make up over half of the public sector workforce, which includes teachers, first responders, and other government employees, and women also make up half of union membership.¹ The *Janus* decision jeopardizes the economic security of these women, and it will make the struggle for equality even harder as we continue our effort to eliminate the wage gap between women and men, a wage gap that is even wider for women of color.

Today, August 7th, is Black Women’s Equal Pay Day, which is the day that symbolizes how long in the year a black woman, on average, must work into the year to make as much money as a white man makes by the end of the previous year. That is eight months of more work, an enormous disparity, and Latina women and Native women must work even longer into the year to make what a white man made by the end of the previous year.

The gender wage gap, exacerbated by race and ethnicity, exists in nearly every profession and industry. In Pennsylvania, overall, employers pay women 79 cents for every dollar they pay to men. Meanwhile, employers in Pennsylvania pay black women 68 cents and Latina women 56 cents for every dollar they pay to white, non-Hispanic men. Pennsylvania’s wage gap is worse than the national average, with projections suggesting that women in Pennsylvania will not achieve equal pay until 2068, nine years behind the average nationwide.² There are many factors that contribute to this pay gap, including direct discrimination in pay, bias against women who are pregnant, parenting, or caregiving, and occupational segregation.

¹ National Women’s Law Center (NWLC), Fact Sheet: Public Sector Unions Promote Economic Security and Equality for Women (Jan 2018) (Source: NWLC calculations based on CPS 2013-2017 data using IPUM-CPS).

² IWPR, Fact Sheet, IWPR # R519, The Economic Status of Women in Pennsylvania (Mar. 2018), <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-pennsylvania.pdf>.

Unions have been an important force for equalizing pay, and it is no surprise that the wages for women and women of color represented by unions are not only higher than their non-union counterparts but also more equal to their male co-workers. Women who are represented by unions in the public sector make about 15 percent more in wages than women who are not represented by unions.³ Women of color who work in the public sector also receive higher wages when they are represented by unions than their public sector counterparts who are not represented by unions.⁴ Overall, there is a smaller wage gap for unionized public sector workers than non-unionized public sector workers.

The Supreme Court's decision in *Janus* jeopardizes the ability of public sector unions to preserve and improve wages, rights, and conditions of employment for workers by undermining the unions' financial stability. For decades, and with the blessing of a unanimous Supreme Court in 1977 in a case called *Abood v. Detroit Bd. of Ed.*, many states passed laws that require workers who declined to join the union to pay a "fair share" fee instead of the full union dues to cover the cost the union incurs for representing them in the bargaining unit. In a 5-4 decision, the *Janus* court overruled this forty-year precedent by concluding that requiring nonmembers to pay a fair share fee violates the First Amendment.

In her dissent, Justice Kagan said:

There is no sugarcoating today's opinion. The majority overthrows a decision entrenched in this Nation's law—and in its economic life—for over 40 years... And it does so by weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy.

The *Janus* decision has certainly weaponized the First Amendment, as dissent says. It has fashioned it into an instrument of inequality. The evidence shows us that the economic security and opportunities for government workers are higher in states with a fair share provision than in states without it. Workers in states that had a fair share rule, particularly women and women of color, have higher wages than workers in states without the rule.⁵

By prohibiting fair share fees in all states, the *Janus* decision aims to weaken the bargaining power of public sector workers. With weakened bargaining power, public sector workers will have a harder time obtaining fair working conditions, higher wages, and other benefits that have a history through competitive pressure of raising standards for all workers, including those in the private sector.⁶ As a result, the *Janus* decision has the potential to affect *all*

³ NWLC, *Public Sector Unions Promote Economic Security & Equality for Women* (Jan 2018).

⁴ *Id.*

⁵ Elise Gould & Will Kimball, Economic Policy Inst., "Right-to-Work" States Still Have Lower Wages (Apr. 22, 2015), <https://www.epi.org/publication/right-to-work-states-have-lower-wages/> (estimates that, on average, wages are 3.1 percent lower for everyone in states without a fair share rule).

⁶ Elise Gould & Heidi Shierholz, *The Compensation Penalty of "Right-to-Work" Laws 2* (2011) ("Where unions are strong, compensation increases even for workers not covered by any union contract, as nonunion employers face competitive pressure to match union standards. Likewise, when unions are weakened by 'right-to-work' laws, the impact is felt by all of a state's workers."), available at <https://secure.epi.org/files/page/-/old/briefingpapers/BriefingPaper299.pdf>.

workers negatively. Unfortunately, because the decision is grounded in an interpretation of the First Amendment, state legislatures cannot simply pass corrective legislation. However, there are important ways the Pennsylvania General Assembly can assist workers and unions to mitigate the effects of *Janus*.

Some states have reacted to the *Janus* decision by passing laws designed to assist unions. For example, California and New York have passed laws that give unions the opportunity to contact employees as soon as they start working.⁷ It is important for Pennsylvania to consider legislation that strengthens unions, but in the meantime, there are several pieces of legislation that have been languishing in the General Assembly that will improve the economic security of workers. This legislation needs to become law, including bills that would:

- **Close the Loopholes in Our Equal Pay law**

Our state Equal Pay Act has not been updated since 1967, when the General Assembly amended it to apply to fewer people. HB 1243 would close loopholes in this state law, ban employer reliance on salary history, and prohibit employers from retaliating against employees for disclosing wage information. The only bill that has progressed is a fake equal pay bill, SB 241, which passed the Senate and now sits in the House Labor and Industry Committee. It does not address the loopholes in our state law. It only takes away authority from local governments to fix the problems.

- **Provide Reasonable Accommodations for Pregnant Women**

While women from all races and ethnicities experience pregnancy discrimination, black women are disproportionately affected, filing 28% of pregnancy discrimination charges with the Equal Employment Opportunity Commission when they are about 14% of the workforce.⁸ One form of pregnancy discrimination involves the denial of reasonable accommodations for pregnant workers who need minor modifications to their jobs, such as having access to water or a chair, and many women lose their jobs when their employers refuse to accommodate them. Black women face a higher risk of pregnancy complications that may result in the need for accommodations and that also make the loss of employer-provided health insurance particularly dire.⁹ In many cases, this form of discrimination falls through the gaps in our current laws.

⁷ See Adam Ashton, Get a state job and meet your labor rep: How state budget protects California unions, *The Sacramento Bee* (June 14, 2017), <https://www.sacbee.com/news/politics-government/the-state-worker/article156146364.html>; Governor Cuomo Signs Legislation to Protect the Rights of New York's Working Men and Women (Apr. 12, 2018), <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-protect-rights-new-yorks-working-men-and-women>.

⁸ National Partnership for Women & Families, *By the Numbers: Women Continue to Face Pregnancy Discrimination in the Workplace* (Oct. 2016), <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/by-the-numbers-women-continue-to-face-pregnancy-discrimination-in-the-workplace.pdf>

⁹ See, e.g., Tucker, M. J., et al (2007). The Black–White Disparity in Pregnancy-related Mortality from 5 Conditions: Differences in Prevalence and Case-fatality Rates. *American Journal of Public Health*, 97(2), 247-251.

HB 1583, known as the Pennsylvania Pregnant Workers Fairness Act, requires covered employers to make reasonable accommodations related to pregnancy, childbirth and related medical conditions unless those accommodations would cause an undue hardship for the employer. Philadelphia already has this protection in place, as does Pittsburgh for its city workers and contractors, but pregnant workers deserve reasonable accommodations no matter where in the Commonwealth they work.

- **Provide Workplace Accommodations for Workers Expressing Breastmilk**

This is also a protection Philadelphia’s workers already have, but workers everywhere need it too, and the Affordable Care Act’s Break Time for Nursing Mothers provision does not protect everyone. The Workplace Accommodations for Nursing Mothers Act, HB 2061, requires employers to provide a private, sanitary space and break time for employees who need to express breast milk unless those accommodations would cause an undue hardship on a small employer. It is mind-boggling that a Legislature with leadership that identifies as “pro-life” while promoting unconstitutional abortion restrictions actively refuses to advance a bill designed to reduce infant mortality by enabling more new mothers to continue breastfeeding after returning to work, as recommended by the American Academy of Pediatrics.

- **Raise the Minimum Wage/One Fair Wage**

Governor Wolf recently raised the minimum wage for state workers to \$12 and eventually to \$15 by 2024,¹⁰ but *all* of Pennsylvania’s minimum wage workers deserve a raise to meet their basic needs. Pennsylvania’s minimum wage of \$7.25 per hour is the lowest allowed by federal law and far lower than our neighboring states. Pennsylvania must raise the minimum wage to \$15.00 and eliminate the subminimum wage for tipped workers.

In addition to these four pieces of legislation, it is also important to expand protections under the Pennsylvania Human Relations Act to better address sexual harassment and LGBTQ discrimination in the workplace, pass paid family leave, expand paid sick days beyond our largest cities, and address fair scheduling and involuntary part-time work. These are important ways of helping all workers in Pennsylvania, including those who will experience a negative impact from the *Janus* decision, which is specifically about public sector workers. In recent sessions, the bills related to the workplace with momentum in Harrisburg are largely preemption bills — bills like SB 241 and HB 861 that, if passed, would do nothing but prevent municipalities from improving the lives of workers within their jurisdictions. It is time for the Pennsylvania General Assembly to do better.

Thank you inviting me to participate in this hearing. The Women’s Law Project looks forward to working with you to improve the economic security of women and women of color in our Commonwealth.

¹⁰ *Governor Wolf Raises the Minimum Wage for Commonwealth Workers, Calls on Legislature to Act* (June 28, 2018), <https://www.governor.pa.gov/governor-wolf-raises-the-minimum-wage-for-commonwealth-workers-calls-on-legislature-to-act/>.