



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Ave., Suite 725, Milwaukee, WI 53202-3141
414-727-WILL
Fax 414-727-6385
www.will-law.org

NOTICE OF CLAIM

January 28, 2021

Keith Posley, Superintendent
Milwaukee Public Schools
5225 West Vliet Street,
Milwaukee, WI 53208

To the Milwaukee Public Schools:

Wisconsin Institute for Law and Liberty (WILL) represents a Milwaukee resident, identified below, who is asserting a claim against the Milwaukee Public School District (MPS) based on its policy of paying MPS public employees to work on private union business. This policy, called “union leave,” amounts to compelled speech in violation of the constitutional guarantee of freedom of speech. This policy is also a violation of the public-purpose doctrine of the Wisconsin Constitution because MPS is paying its employees to work exclusively for private entities—unions—without any legitimate public purpose. You are hereby notified of this claim as provided by Wis. Stat. § 893.80.

Under MPS’s current union leave policy, most MPS employees are entitled to *at least* ten days per fiscal year of paid union leave. Any MPS employee using union leave is working solely as a “representative” of a labor union for the purpose of participating in “union-related activities.”

Under MPS’s union leave policy, MPS employees are entitled to use union leave to work on any union activities. The MPS labor unions involved engage in a variety of political activities including advancing the direct interests of the public employee unions, as well as electoral activity, lobbying to influence public policy, and making political donations.

During the 2017, 2018, and 2019 school years, MPS spent thousands of dollars paying employees for hundreds of hours working on behalf of labor unions for the labor unions’ private purposes. We understand that MPS has authorized union leave for the 2020–2021 school year and continues to spend money on this policy.

Under MPS's union leave policy, public employees using union leave are not obligated to provide an accounting to MPS for how such time is used and MPS does not audit any labor union's use of union leave time. MPS does not control or direct the activities of union members while they are using leave time. Instead, the activities are directed and controlled solely by the unions. As a result of MPS's union leave policy, MPS spends taxpayer money to subsidize the speech and activities of labor unions.

The Wisconsin Constitution guarantees the freedom of speech, and this right "includes both the right to speak freely and the right to refrain from speaking at all." *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2463 (2018). The government may not compel a person to speak or adopt an opinion not his own. Relatedly, "[c]ompelling a person to subsidize the speech of other private speakers raises similar First Amendment concerns." *Janus*, 138 S. Ct. at 2464. Quoting Thomas Jefferson, the Supreme Court has agreed that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical." *Id.*

The United States Supreme Court has further explained that the compelled subsidization of private entities' speech violates the First Amendment, especially when the speech involves "political matters." *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 557–58 (2005) (collecting cases). Public sector labor unions, such as MPS's labor unions, are not viewpoint neutral, and instead, their activities express views on "important political issues." *Harris v. Quinn*, 573 U.S. 616, 636 (2014) ("In the public sector, core issues such as wages, pensions, and benefits are important political issues."). Union speech supports "political or ideological activities" and includes "sensitive political topics," including speech related to public spending on education, topics addressed during collective bargaining, positions taken in during grievance procedures, "child welfare, healthcare, and minority rights, to name a few." *Janus*, 138 S. Ct. at 2475–6.

MPS's union leave policy amounts to unconstitutional compelled speech. When an MPS employee uses taxpayer-funded union leave, that employee is working for the union, providing support to the union, and expressing support for and directly conducting the unions' political and ideological activities.

MPS is funded, in large part, by taxes paid by state and local taxpayers. Daniel P. Sebring is a resident of the City of Milwaukee and lives within the boundaries of the Milwaukee Public School District. He is a taxpayer, paying both local property taxes on an annual basis, state income taxes, and sales taxes. He resides at [REDACTED], Milwaukee, WI 53220. Mr. Sebring's taxes fund MPS, including the paid leave under the union leave policy.

As a taxpayer, Mr. Sebring has suffered a loss as a result of MPS's unconstitutional union leave policy. Because he is a Wisconsin and Milwaukee

taxpayer, Mr. Sebring is required to provide financial support to labor union speech as a direct result of MPS's union leave policy. Mr. Sebring disagrees with labor union speech and advocacy on, among other things, endorsing of candidates for office, election canvassing in support of favored candidates, lobbying the state legislature, filing of grievances, collective bargaining, representing employees at grievance and complaint hearings, and attending union meetings, training, and conferences. Mr. Sebring is being forced to subsidize the speech of a private organization with which he disagrees.

MPS's union leave policy also violates the public purpose doctrine of the Wisconsin Constitution. Under this doctrine, public funds may be expended for only public purposes. "An expenditure of public funds for other than a public purpose would be abhorrent to the Constitution of Wisconsin." *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 414, 208 N.W.2d 780, 795 (1973).

MPS's union leave policy allows the expenditure of public funds solely to support and advance the mission and expressive advocacy goals of a private entity – a labor union. MPS's policy of providing monetary support directly to labor unions to support that union's activities is not spending money for a "public purpose" and thus the policy itself is unconstitutional. Even if MPS's policy of providing monetary support directly to a private labor union to support that union's activities were somehow a "public purpose," there are no regulations for control and accountability to secure the public interests, and the policy is still unconstitutional in such a case.

The harms described in this letter are ongoing and damages undetermined. On behalf of Mr. Sebring, we ask that you suspend this unconstitutional practice of union leave.

Any communication to Mr. Sebring regarding this matter should be directed to my attention. Service of this form does not waive any other claims or arguments, including the argument that Wis. Stat. § 893.80 is inapplicable to claims for injunctive and declaratory relief.

As a final matter, I am making a public-records request pursuant to Wis. Stat. § 19.35. Please provide me with electronic copies of any records that establish that the work performed by MPS employees under the MPS union leave policy in 2019 and/or 2020 was for a public purpose.

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Daniel P. Lennington
Deputy Counsel

cc: Members of Milwaukee Public Schools Board of School Directors via email