



TO: United States House of Representatives, Committee on Education and Workforce

FROM: Mark Janus, Senior Fellow, Liberty Justice Center

RE: *LMRDA Reform Proposals*

DATE: July 22, 2025

The Liberty Justice Center and Mark Janus submit the following comments in support of reforming the *Labor-Management Reporting and Disclosure Act of 1959* (LMRDA).

Liberty Justice Center is a nonpartisan, non-profit, public-interest litigation firm devoted to protecting Americans' fundamental constitutional rights. We litigate in federal and state courts across the country, representing small businesses, workers, and individuals affected by government overreach, free of charge. Liberty Justice Center has and continues to represent public sector employees in state and federal courts around the country. Our most decisive win is the affirmative ruling in *Janus v. AFSCME* at the Supreme Court, where we achieved a major victory for the free speech rights of public-sector



workers.<sup>1</sup> These suits have provided the Liberty Justice Center with extensive insight into the flaws in current labor police, particularly in the areas the Committee is concerned with today: strengthening union members' rights, increasing fiscal transparency, and ensuring unions are more accountable to their members.

To ensure that union members' free speech rights are protected, unions practice fiscal transparency, and unions are held accountable to their members, the Committee should consider the following reforms to the LMRDA:

- Congress should clarify the rights in Title I granting union members democratic rights, particularly free speech rights.
- Congress should add specific categories in the LM-2 form for political and lobbying activity in schedule 17 and require unions to post LM reports on their public websites and in union publications.

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<sup>1</sup> See *The Janus Case*, <https://libertyjusticecenter.org/about/the-janus-case/> (last visited July 8, 2025).

## **Title I Free Speech Rights:**

Congress should clarify the rights in Title I granting union members democratic rights, such as free speech and assembly. Current restrictions on speech under § 101(a)(2), as stated by the Supreme Court in *United Steelworkers of America v. Sadlowski*, need only be “reasonably related to the protection of the organization as an institution.”<sup>2</sup> This extremely loose standard, rather than requiring unions to prove that a regulation on speech would actually accomplish its stated goal, merely requires them to provide a connection to running the union, even if that reason is mere pretext. The regulation at issue in *Sadlowski*, for example, was a complete ban on campaign donations from nonmembers in union elections, which the Court held was reasonable because it was “rationally related to the union’s legitimate interest in reducing outsider interference with union affairs.”<sup>3</sup> As the dissent noted, however, this kind of ban could also easily be used to keep union incumbents in power, and in effect “[a] candidate may

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<sup>2</sup> 457 U.S. 102, 112 (1982).

<sup>3</sup> *Id.*

actually be denied his statutory right to run for office because nonmembers have exercised their own First Amendment rights.”<sup>4</sup>

Our work, particularly in the landmark case *Janus v. AFSCME*,<sup>5</sup> further demonstrates the importance of using clear rules over loose standards for protecting union members’ rights. Before *Janus*, the Supreme Court held that public sector unions could require mandatory fees for all employees so long as the fees were merely “germane” to collective bargaining.<sup>6</sup> This standard, which essentially mirrored the “rationally related” standard in *Sadlowski*, turned out to be unworkable in practice. It was far too lax and allowed unions to funnel dues towards political causes, which violated members’ First Amendment rights by essentially permitting union leaders to subsidize welcome political speech at the cost of unwelcome speech.<sup>7</sup>

LMRDA’s Title I reasonableness standard is just as loose. It therefore threatens the free speech rights of union members, particularly those who may not share the ideology of union leadership.

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<sup>4</sup> *Id.* at 126 (White, J., dissenting).

<sup>5</sup> 585 U.S. 878 (2018). *See also The Janus Case*, *supra* note 1.

<sup>6</sup> *Sadlowski*, 585 U.S. at 886 (citing *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 235-36 (1977)).

<sup>7</sup> *Id.* at 897.



Because § 101(a)(2) allows unions to suppress speech and assembly when leadership can prove a “reasonable” justification for the regulation, members who dissent face two obstacles: (1) Having to bear the burden of costly litigation, which is beleaguered by the fact that (2) the outcome is highly uncertain since it is based on a vague and deferential standard. These obstacles chill members from exercising their free speech rights, as rank-and-file members who already lack the political and financial resources to influence union policy would also be unable to bear the costs of litigating regulations that infringe on their rights.

Free speech is pivotal to union democracy, as members cannot challenge leadership or seek to influence union policy without speaking out. Furthermore, as Liberty Justice Center has experienced firsthand, union leadership cannot be universally trusted with regulating the free speech rights of their members. Even after winning the *Janus* case, where the Supreme Court made it clear that public-sector union members have free speech rights, many unions continue to infringe on those rights. Liberty Justice Center continues to represent workers in

lawsuits throughout the country to enforce the *Janus* ruling and protect their First Amendment rights.<sup>8</sup>

Clear rules would eliminate confusion about what restrictions unions may place on speech and make it clear to workers when their rights are being violated. This would encourage better speech policies, encourage members to exercise their free speech rights, and prevent unnecessary and costly litigation over “reasonableness.”

### **Fiscal transparency and accountability:**

Fiscal transparency and accountability are directly related to members’ free speech rights. Even if members have strong rights and are willing to exercise them, they cannot speak out against spending they are not aware of. They also cannot meaningfully consent to union membership in the first place if they do not know or understand how a union intends to spend their dues. The current Form LM-2 is therefore insufficient to understand how dues are allocated because, as the Supreme Court noted in *Janus*, dues “are often expressed in extremely broad and vague terms.”<sup>9</sup>

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<sup>8</sup> *Workers’ Rights*, <https://libertyjusticecenter.org/issues/workers-rights/> (last visited July 8, 2025).

<sup>9</sup> 585 U.S. at 881.

Schedule 16, which covers “Political Activities and Lobbying,” encompasses a broad range of activities, from spending on political advertisements, yard signs, and PAC or Super-PAC contributions, to paying the salaries of lobbyists, writing comments, or drafting legislation.<sup>10</sup> This means union members often have no idea whether their dues are being used to advance member interests, or to support political causes that are completely unrelated to member interests or may even be against many members’ views.

Many political activities fail to make it into these categories at all, and are instead intentionally misclassified, or classified in a technically-correct but intentionally misleading way, to obfuscate how dues are actually being spent. One survey of union expenditures in 2020 found tens of millions of dollars’ worth of mislabeled political expenditures,<sup>11</sup> such as the National Education Association giving \$17 million to the Strategic Victory Fund, a “dark money” PAC which spends money

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<sup>10</sup> U.S. Dep’t of Labor, Office of Labor-Management Standards, Instructions for Form LM-2 Labor Organization Annual Report Instructions Annual Report 26, [https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/GPEA\\_Forms/2020/efile/LM-2\\_instructionsRevised2020.pdf](https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/GPEA_Forms/2020/efile/LM-2_instructionsRevised2020.pdf)

<sup>11</sup> *Big Labor Reported Spending \$1.8 Billion on Politics in the 2020 Election Cycle*, National Institute for Labor Relations Research, <https://nilrr.org/big-labor-reported-spending-1-8-billion-on-politics-in-the-2020-election-cycle/> (last visited July 10, 2025).

supporting liberal candidates and causes around the country.<sup>12</sup> This includes spending on political issues unrelated to labor relations, such as opposing a ballot proposition on a tax revenue cap in Colorado,<sup>13</sup> a constitutional amendment regarding redistricting in Missouri,<sup>14</sup> and an amendment involving whether manufacturers can negotiate their taxes in Louisiana.<sup>15</sup> This expenditure to the Strategic Victory Fund, despite it being obviously and exclusively political, was labeled under schedule 17 — “contributions, gifts and grants.”<sup>16</sup>

To remedy the lack of clarity in union expenditures and ensure union members know what portion of their dues are being spent towards

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<sup>12</sup> Sandra Fish, *Dark money and big donors fuel the ballot battle over Proposition CC in Colorado*, The Colorado Sun (Oct. 17, 2019, 4:00 AM), <https://coloradosun.com/2019/10/17/dark-money-donors-proposition-cc-colorado/>. See also Marc Caputo & Christopher Cadelago, *Democrats launch massive battleground plan led by Obama general*, Politico (Jan. 31, 2021, 11:30 AM), <https://www.politico.com/news/2020/01/31/obamas-field-guru-leading-massive-organizing-effort-109805>.

<sup>13</sup> Fish, *supra* note 12.

<sup>14</sup> Tatyana Monnay, *After Amendment 3: It Passed in 2020, but the Coalitions That Fought it Remain Strong*, KBIA (Jan. 15, 2021, 6:20 PM), <https://www.kbia.org/news/2021-01-15/after-amendment-3-it-passed-in-2020-but-the-coalitions-that-fought-it-remain-strong>.

<sup>15</sup> Sam Karlin, *Louisiana voters reject new tax break in a landslide, after opponents put on full-court press*, The Advocate (Nov. 4, 2020), [https://www.theadvocate.com/baton\\_rouge/news/politics/elections/article\\_e00623c6-1ece-11eb-a2f4-7fe3a8062ddd.html](https://www.theadvocate.com/baton_rouge/news/politics/elections/article_e00623c6-1ece-11eb-a2f4-7fe3a8062ddd.html).

<sup>16</sup> Instructions for Form LM-2, *supra* note 9 at 27; *Big Labor Reported Spending \$1.8 Billion on Politics in the 2020 Election Cycle*, *supra* note 11.



lobbying versus politics, schedule 16 should be broken into two discrete categories. While political activities and lobbying are certainly related to each other, lobbying is often much more focused on specific labor-related policies. Political activities, however, such as donating to political campaigns, put union dues towards unrelated political issues that union members will not uniformly agree on. This implicates union members' freedom of speech, as these expenditures are de-facto endorsements that represent the union as a whole. Members ought to have a clear understanding of the political/lobbying divide in union spending, so they know whether and to what extent their dues are being used to speak on their behalf.

To further financial transparency and accountability to their members, unions should also be required to publicly post their LM reports. Requiring unions to post LM reports on their public websites and in unions publications would meaningfully improve access for members and researchers, as these reports can be difficult to access.

First, many union members may be unfamiliar with LMRDA and its filing procedures and may not even know where to begin to find their union's LM reports. Furthermore, over one thousand unions are

chronically delinquent in reporting their LM Forms, which prevents even members that do know where to look from accessing them.<sup>17</sup>

Liberty Justice Center has faced this issue in our own work, such as the ongoing case *Weiss v. Chicago Teachers Union*,<sup>18</sup> in which we sued to compel the Chicago Teachers Union to release an audit—as required by the union’s own bylaws—after failing to do so since 2019.

A public-posting requirement would address both of these issues for unions covered by the LMRDA. It would make reports significantly more accessible, thereby allowing members to observe how their dues are being spent. Union members would also know when reports should be filed, allowing them to demand the reports in cases of delinquency. This would be an effective catalyst in addition to pressure from the Department of Labor, since members are in a stronger position to pressure union leadership and monitor union governance.

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<sup>17</sup> U.S. Gov’t Accountability Off., GAO-25-107297, *Department of Labor Should Enhance Enforcement and Assistance Process* 17 (2025).

<sup>18</sup> *Weiss v. Chicago Teachers Union*, No. 2024-CH-09334 (Ill. Cir. Ct. Cook Cty. Chancery Div. filed Oct. 9, 2024) (pending). See also <https://libertyjusticecenter.org/cases/weiss-v-chicago-teachers-union/> (last visited July 10, 2025).



We wholeheartedly support the Committee's goals of protecting union members' democratic rights and ensuring financial integrity in labor organizations. To achieve these goals and thwart misconduct such as union leadership violating members' free speech rights and unauthorized political expenditures, we believe the Committee should support clearer rules and easier access to information. By equipping union members with the tools to understand their unions' expenditures, financial responsibilities, and act upon their rights, we expect members will be able to more fully and knowledgeably participate in union democracy.

Thank you for the opportunity to comment.

A handwritten signature in black ink that reads "Mark Janus".

DATE: July 22, 2025.

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