CONGRESSIONAL STATEMENT FOR THE RECORD

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FOR THE

COMMITTEE ON VETERANS' AFFAIRS' SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

ON

H.R. 1461, VETERANS, EMPLOYEES, AND TAXPAYERS PROTECTION ACT OF 2017

March 21, 2017

Chairman Arrington and Ranking Member O'Rourke, and members of the Subcommittee, my name is J. David Cox, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). I submit this statement in opposition to H.R. 1461 on behalf of the 700,000 federal and District of Columbia employees AFGE represents, and I urge the Subcommittee to reject this legislation.

Background

On January 17, 1962, President John F. Kennedy signed Executive Order 10988, *Employee-Management Cooperation in the Federal Service*, which gave federal employees the right to unionize and bargain collectively. Seven years later, on October 29, 1969, President Richard Nixon issued Executive Order 11491, which reaffirmed and expanded those rights.

In 1978, Congress enacted the Civil Service Reform Act (CSRA) of 1978 which states clearly the public interest in labor unions and collective bargaining in the federal sector. The language of the law includes the following:

The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.[1]

The CSRA went on to require federal employee unions to provide a wide range of representational services for all employees in their collective bargaining units, including those who choose not to join the union, not to pay dues. Under this "open shop" arrangement, federal employee unions are also forbidden from collecting any fair-share payments or fees from non-members for the services which the union has a legal obligation to provide.

In order to fulfill unions' legal obligation to provide the same services to those who pay as well as those who choose not to pay, the Executive Orders and the CSRA instructs agencies to bargain with federal employee unions to determine a reasonable amount of "official time" to carry out these duties. These legal provisions have produced an efficient and effective mechanism for the fulfillment of the duty of fair representation.

[1] https://www.law.cornell.edu/uscode/text/5/7101

Federal employees agree to serve as volunteer employee representatives, and agencies allow them to use a reasonable amount of official time to engage in representational activities while on duty status.

The representation activities that these elected volunteers may engage in while in duty status are limited, and include:

- Developing systems to allow workers to perform their duties from alternative sites, thus increasing the effectiveness and efficiency of government;
- Participating in management-initiated efforts to improve work processes; and
- Creating fair promotion procedures that require that personnel selections be based on merit, in order to allow employees to advance their careers;
- Establishing flexible work hours that enhance agencies' service to the public while allowing employees some control over their schedules;
- Setting procedures that protect employees from on-the-job hazards;
- Enforcing protections from unlawful discrimination in employment;
- Providing affected workers with a voice in determining their working conditions.

Official time may not be used for union organizing, the union's political activities, or the conduct of internal union business, all of which are prohibited by law to be undertaken during hours designated as official time.

The CSRA provides that the amount of official time deemed reasonable for negotiations and other representational responsibilities that may be used is limited

to that which the agency and its unions agree is “reasonable, necessary, and in the public interest”**.** [2] The actual amount of time permitted to any union representative is determined in the course of formal negotiations that follow established legal regulations. The notion that agencies have ever provided any kind of open-ended quantity of official time is erroneous. There is always a cap or maximum amount authorized by the agency and set forth in the collective bargaining agreement. Under AFGE’s current collective bargaining agreement with the Department of Veterans’ Affairs, local union officials are allocated official time under a formula of no more than 4.25 hours per bargaining unit employee per calendar year times the number of employees the union is legally required to represent at each facility. This number represents an annual maximum.

To protect the taxpayer and the independence and integrity of the union, the statute clearly states that all non-representational activities of the union must be performed while in a non-duty status. That is, the same individual who has volunteered and been elected by his or her co-workers to provide representational services cannot do any of the following while on “official time” or while in duty status:

- solicitation of membership;
- internal union meetings;
- elections of officers; and
- partisan political activities.

I want to emphasize, Mr. Chairman, that official time may not be used for the above activities. I can assure you that AFGE’s elected representatives receive extensive

[2] https://www.law.cornell.edu/uscode/text/5/7131

training and guidance on what activities are permitted and what activities are forbidden on official time. We take very seriously both our legal obligation to represent all members of our bargaining units, and the legal prohibitions against engaging in non-representational activities. AFGE representatives know the difference and act accordingly.

Finally, federal employees are permitted to file appeals of personnel actions outside the scope of the union's negotiated collective bargaining agreement. Examples include appeals through an agency's internal administrative grievance system or Equal Employment Opportunity programs, appeals to the Merit Systems Protection Board (MSPB) for adverse personnel actions such as suspensions, removals, and reductions-in-force, appeals to the Department of Labor (DOL) and/or the MSPB for violations of veterans' preference rules, appeals to DOL for workers' compensation, and appeals to OPM for violations of the Fair Labor Standards Act. These statutes provide a reasonable amount of time to employees and their representatives to file such appeals.

Specifically, AFGE opposes the provisions of H.R. 1461 for the following reasons:

Excessive Limitations of Official Time

While H.R. 1461 does not, on its face, eliminate official time in the Veterans Administration, it places limits that are inconsistent with unions' legal obligation to provide the same services to those employees who pay dues as well as those who choose not to pay. This legislation severely limits the use of this longstanding tool which

gives federal agencies and their employees the means to expeditiously and effectively address mission-related challenges and bring closure to conflicts that arise in the workplace.

Dictating who may or may not use official time arbitrarily makes a significant portion of federal employees who choose to join the union ineligible for election to leadership positions in the union. In accordance with the law, official time is used only by elected officers in the union. By prohibiting most medical professionals from using any official time, and severely restricting the use of official time by patient care professionals, the Veterans Health Administration will no longer have a managed system in place that gives employees with specific health care expertise a structured system to safely report and address issues impeding the delivery of quality medical care to veterans. In many cases, the union official best able to address employer-employee relations effectively and timely is a person who has worked in a similar profession.

Further, management has often expressed to our local elected leaders a preference for engaging on labor-management issues with just a few representatives who are available and knowledgeable to address those issues in a timely manner. Many labor-management concerns can be addressed in the early stages. If we are not able to have sufficient time dedicated to these needs, problems that can be resolved before they become larger may grow and multiply. An efficient working relationship between labor and management, with individuals dedicated to this work from both labor and management, is the best way to ensure that VA staff are at their jobs serving America's

veterans.

Revoking Membership At Any Time

H.R. 1461 allows union members to revoke their membership at any time. Right now, they sign a contract for a year. Bargaining unit members should not be able to drop in and out several times each year, and a contractual agreement between the union and its members must be upheld. Individuals cannot buy health insurance just in time to go to the doctor, drop it the next day, and then pick it up again a few months later when they get sick. The union dedicates resources to its membership and should be able to count on a year-long membership at a time.

Extension of Probationary Periods

H.R. 1461 extends from 12 months to 18 months the probationary period for newly hired employees. Any good manager knows within a year, in fact within six months, whether a new hire is a good fit and will thrive in their position. Further, with 45,000 positions to be filled, the VA is at a deficit in attracting highly trained and experienced professionals. The VA will lose its competitive edge as an employer if it cannot provide the stability and benefits of full-time career positions, especially when recruiting medical professionals.

Ban on Communication with Congress while on Duty Time

H.R. 1461 prohibits formal communication with lawmakers while on official time. This would include the ability to inform Congress of the impact of new or pending legislation

or an agency's failure to comply with Congressional inquiries or requests. The ability to make presentations to lawmakers is an important element of our representational responsibilities. We ask that you modify this blanket prohibition because it is too broad and ultimately inconsistent with the public interest in having formal lines of communication open between Congress and rank and file federal employees in the Executive Branch. Please be assured that we train our member on the requirements of the Hatch Act and we adhere closely to those appropriate restrictions. Oversight of federal agencies is the one of the most important functions of the Congress. We urge you to recognize that federal employees are often the most knowledgeable and committed advocates for the mission of the government. Congress and the American people benefit when they are able to have direct formal communication regarding processes and systems that may be working or not working, and what might be needed to improve an agency's mission. Although *as citizens* federal employees can always meet with their Congressional representatives, *as federal employees* our members have voted to have the right to be represented formally by their employee organization and have voted to have their views conveyed to Congress through their union.

Official Time: A Partnership that Works

The provision of a reasonable amount of official time for representational duties in the federal sector reflected a choice from among the variety of arrangements that existed in the private sector labor-management relations and collective bargaining agreements. The alternative to "official time" in private sector collective bargaining agreements has

been to charge employees who exercise the right not to pay dues to the union a “fair share fee” to cover the costs a union bears in enforcing its contract with an employer. In these cases, the union uses the fees to hire “business agents” to preform representational duties. There may still be elected shop stewards who convey information to business agents, but the actual costs of representation are born by the union and paid for by both dues and fair share fees.

Imagine for a moment an arrangement where there is neither official time nor fair share fees, yet the union is legally liable for representation of each individual in the bargaining unit. These representational duties would include both negotiating and enforcing the terms of the contract on behalf of the employees in the unit. There could be no union representation. This is an obvious absurdity, as indeed there is no private entity that is required by law to offer its services for free. No business is required to do this. No non-profit is required to do this. Even religious institutions and other tax-exempt entities are not required to do this. This is the peculiarity of law that gave rise to the negotiation between federal agencies and their unions for reasonable time to carry out these representational duties prescribed by law.

GAO’s Report: Official Time Also Makes the Government More Efficient, Effective,

and Gives Value to the Taxpayer

At the Department of Veterans' Affairs (DVA), employee representatives are able to work together with agency managers to use their time, talent, and resources to improve the delivery of services to veterans. The January 2017 Government Accountability Office (GAO) report we are here to discuss today (*Union Activities: VA Could Better Track the Amount of Official Time Used by Employees*) found time and again that elected union representatives who worked with VA managers on workplace and patient issues brought value because of the deep commitment to veterans' care that AFGE shares with DVA. "Managers and union officials from most groups we interviewed said that employees' use of official time improved decision making and helped them resolve problems at their respective VA facilities, and some believed it improved relationships between management and labor." [3]

The GAO report found that in two out of three facilities investigated, 80% of the groups of managers interviewed agreed that union representatives improved decision making and helped resolve problems, and 60% of the manager groups agreed that the union helped improve relationships. [4] Our members' only goal is to deliver excellent care and services to our nation's veterans. Excellent, highly satisfied and dedicated employees are the VA's most important resource and reasonable amounts of official time allows employees to participate directly in agency decisions that affect them. And the data in the GAO report confirm this to be true.

[3] http://gao.gov/assets/690/682250.pdf page 19.
[4] http://gao.gov/assets/690/682250.pdf page 20.

It must be emphasized that nowhere in the GAO report is there any suggestion or allegation of union wrongdoing with regard to the use of official time in DVA. GAO found no union failure to report information and no instance where information reported was inaccurate. Rather the GAO found simply that DVA failed to collect the data properly.

Private industry has known for years that a healthy and respectful relationship between labor and management improves productivity, innovation, quality, and customer service and is often the key to survival in a competitive market. It is not uncommon for healthcare companies in the private sector to bargain with unions over paid time for union officials to be released from duty to work on quality improvement, safety and other workplace matters. Kaiser Permanente, Johns Hopkins Hospital, the Mayo Clinic, the University of Chicago Hospital, New York Presbyterian, Cedars-Sinai -- the crown jewels of America's private healthcare system -- all have unionized employees.

No effort to improve governmental performance--whether it's called reinvention, restructuring, or reorganizing--will thrive in the long run if labor and management have an adversarial relationship or are precluded from engaging in a mutually respectful exchange of ideas. The reasonable use of official time provides the means, not only in DVA but also throughout the federal government by which employees and their elected representatives participate in the improvement of DVA services. In these times, it is essential for management and labor to develop and maintain a stable and productive

working relationship. We must continue to allow employees to choose their representatives who will interact and work with DVA management. This is crucial if we are to continue to improve the delivery of DVA services to veterans.

Employee representatives and managers have used official time through labor-management partnerships to transform the labor-management relationship from an adversarial stand-off into a robust alliance. And that just makes sense. If workers and managers are communicating effectively, workplace problems that would otherwise escalate into costly litigation can be dealt with promptly and more informally. And that is exactly what happens in DVA. Absent the union's ability to resolve a misunderstanding or dispute quickly at the local level, managers and employees have few options. If an employee leaves or is terminated because of a misunderstanding that could easily have been handled through a union dispute resolution process, DVA bears the costs of recruitment and training of a replacement, a costly, disruptive and unnecessary outcome that a good labor-management relationship can and does prevent on a routine basis.

Routinely, we see examples of official time under labor-management partnerships or forums used to bring closure to workplace disputes between the DVA and an employee or group of employees. GAO's findings support this—it found that VA managers and union officials confirm that including the union pre-decisionally in the process of considering management decisions improved the decision-making process. The GAO study also cited that the union and management worked together on nurse scheduling

at one facility with the goal of improving staff retention and morale. Staff retention and increased morale among VA employees is critical to being able to hire and retain outstanding staff to improve quality treatment of veterans. It is the inclusion of front-line employees through their elected union representatives that make these kinds of changes not only more frequent, but also more successful and more likely to result in better service to our veterans.

Healthier Labor-Management Relations in the Federal Government Also Produce Cost Savings in Reduced Administrative Expenses

Employee representatives use official time for joint labor-management activities that address operational, mission-enabling issues that improve VA's service to veterans. Patient safety initiatives are a prime example of this type of work, and the VHA's prominence and success in this area is a source of pride for AFGE. Official time is allowed for activities such as designing and delivering joint training of employees on work-related subjects; and introduction of new programs and work methods that are initiated by the agency or by the union. As examples, such changes may be technical training of health care providers or jointly inspecting the workplace for hazards; participating in VA-wide improvement initiatives like MyVA which examined a multitude of ways to improve veterans' care, veterans benefit processing and other VA system improvements.

Employee representatives use official time for routine and unusual problem-solving of

emergent and chronic workplace issues. For example, when they participate in VA health and safety programs which emphasize the importance of effective safety and health management systems in the prevention and control of workplace injuries and patient safety, representatives have been granted official time by their managers. Another example comes from the important area of patient safety. The reasonable use of official time also allows union representatives to alert management to issues reported to the them without disclosing the identity of the employee who made the disclosure, issues that may be a matter of life and death to patients. Employee representatives have also used allotted official time to ensure that employees are hired and promoted fairly. This work leads to better recruitment and retention of desperately needed front-line health care to better care for veterans.

Further Findings in the GAO Report

The GAO Report found that the use of official time by union representatives was valuable to making VA a great place to work and improving the delivery of care to veterans. In particular, the GAO report found that the use of official time by elected union representatives: improved agency decision making, improved conflict resolution and led to better, less adversarial outcomes. The use of official time improved the relationship between VA management and employees. While some challenges in staffing were identified in GAO's report, it is important to note that release from duty is always coordinated and agreed to by VA management when employee representatives participate in workplace matters. Improved employee engagement is a goal of the

federal government overall and also of the VA in particular. Scaling back the involvement of employee representatives under the guise of alleged "government efficiency" would be a mistake, a short-sighted policy which would deprive the agency of the valuable contributions front line employees make to the VA through the use of official time.

The challenges and issues cited by GAO are solely related to VA's administrative decisions about how to track official time. AFGE supports the accurate collection of data, which is called for in H.R. 1461. It would be inappropriate, however, to use any failure on the part of the VA in the implementation of its internal management systems as a basis to disturb existing law and practices with regard to official time, which H.R. 1461 does. The GAO report found that the use of official time was value added to the agency and any bookkeeping failure on the part of DVA management would not be a legitimate basis on which to undermine the valuable contributions of employee representatives in the workplace.

The GAO report confirms that official time is a valuable tool for facilitating employee input into the shared goal of improving the VA. Despite the numerous investigations undertaken by Congress, GAO, VA, and VA's OIG and other entities, the use of negotiated time for union representatives has never been found to be connected in any way to veteran waitlists, slow processing of veteran claims or any of the challenges identified over the years in VA. Instead, the facts show that official time is valued by both VA management and employees for problem-solving and improving the delivery of

care and services to veterans. Participation of employees' elected representatives in improving the VA and adding value to VA and the whole federal government needs to continue so we can all accomplish the goal of providing the best services. We urge Congress and the Administration not to undermine a system that has a proven track record of success in improving government. Inclusion of employees' perspectives in efforts to make the VA a better workplace and a better healthcare system have proven their worth, and I ask that the committees present today recognize the importance of permitting this important work to continue.

Opposition to the use of Official Time

Those who would like there to be no union representation in the Department of Veterans Affairs or in any other workplace, public or private, have tried to suggest that VA's understaffing problems could be eliminated if only there were no one involved in representation of bargaining unit employees. Of course, the numbers make this assertion ridiculous. As stated previously, it is estimated that the VA has in excess of 45,000 unfilled medical positions nationwide. Even if we assume that GAO's concerns about VA's recordkeeping with respect to the use of official time are valid and VA has perhaps understated the number of hours used annually, the numbers reported for 2015 are small: approximately 2.7 hours annually per bargaining unit employee.[5] The number of hours reported to have been spent on official time throughout DVA, including the Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA) was equivalent to no more than 508

[5] http://gao.gov/assets/690/682250.pdf page 13

FTE for bargaining units of nearly 300,000 in an agency with 350,000 employees.

To attempt to place the blame for VA understaffing on this small element of the Department's operations is ludicrous. It would be just as appropriate to blame it on the number of people who work in the Office of Resolution Management (288), or the number in the General Counsel's Office (723), or the Office of the Deputy Assistant Secretary for Finance (869) or even the 537 who work in the Secretary's Office.[6] If all of the people in these positions were transferred to the bedside of veterans, one could say that there were more people providing direct patient care. But the Department is an enterprise with many functional needs, and each of these offices perform necessary functions. No one is suggesting that the work of these offices should cease in order that incumbents be transferred to fill openings elsewhere. The function performed by union representatives is just as vital and important as any other Department function focused on support of veterans. To suggest otherwise is nothing more than a transparent effort to deny employees the union representation for which they have voted. And more important, it does a disservice to both the veterans who work at the Department and the veterans who rely on DVA's employees for the services they have earned.

Conclusion

This Subcommittee held a hearing on February 16, 2107 at which it was acknowledged that the GAO report did recommend that the DVA improve its recordkeeping with regard to union representatives' use of the reasonable amounts of official time permitted to them. The report did not conclude that any of the provisions of H.R. 1461 were

[6] https://www.fedscope.opm.gov/ibmcognos/cgi-bin/cognosisapi.dll

necessary or warranted. It identified no union failure or unwillingness to report use of official time to DVA management. And in no way did the report suggest that the use of official time presents problems for the Department. Instead, GAO that this Subcommittee reviewed confirms that both union and management representatives report positive outcomes as a result of allowing for time for union representation. Better decisions, better resolution of the inevitable problems that arise in a workplace, and improved relationships were all identified as benefits of the work of union representatives. And these benefits all accrue to the veterans we hold in such high esteem, the veterans to whose care we have devoted our careers.

I ask the members of the committee to bear in mind that fully one third of the Department's workforce are veterans themselves. They have fought bravely for the freedoms we all cherish, and that includes the freedom to form, join and be represented by a union. Any effort to undermine these veterans' union rights should be vehemently opposed. The right to form and join a union is surely undermined if that union is prevented from exercising its representational duties because representation is the very purpose of the union. I thank you for the opportunity to submit this statement and I strongly urge the Subcommittee to reject H.R. 1461.