

**BILL:** Senate Bill 819  
**TITLE:** Education - Collective Bargaining - Exclusive Representative's Access to New Employee Processing  
**POSITION:** OPPOSE  
**DATE:** March 15, 2018  
**COMMITTEE:** Finance Committee  
**CONTACT:** John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE), representing all twenty-four of the state's local boards of education, opposes Senate Bill 819.

MABE opposes this bill because it would create a new, contentious and therefore disruptive, mandatory subject of collective bargaining between teachers unions and local boards of education. The subject of bargaining is newly proposed because of a pending Supreme Court case that threatens all unions' ability to collect dues, or representative fees, from non-members. In anticipation of such a blow to the automatic, system-wide scope of employee generated revenue, teachers unions are promoting legislation to secure structured access to new employees to promote union membership. To be clear, MABE has no objection to the unions' rights to promote membership. MABE opposes enacting a mandate on school systems to administer the process.

In 1976, the Supreme Court held that state employees who choose not to join a public sector union may, under state law, be required to pay a representation or "agency" fee to the union that represents the employee's bargaining unit. (*Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1976)). The constitutionality of state laws, such as in Maryland, that require employees who choose not to join the union to pay a representation or "agency" fee to the union has been addressed in several more recent Supreme Court decisions. In one recent decision, (*Harris v. Quinn*, 134 S. Ct. 2618 (2014)), the Supreme Court seriously questioned the reasoning expressed in the *Abood* decision. The Court suggested that the decision may be reviewed again if challenged by a public employee who chooses not to join a public sector union and who objects under the First and Fourteenth Amendments to paying a representation or agency fee required under a state law. Such a challenge came before the Supreme Court in *Friedrichs v. California Teachers Association*, 578 U.S. (2016) where, following the death of Justice Antonin Scalia, an evenly divided Supreme Court let stand a decision by the United States Court of Appeals for the Ninth Circuit re-affirming the validity of the *Abood* decision.

Today, the Nation awaits a landmark decision in *Janus v. American Federation of State, County, and Municipal Employees Council (AFSCME)* on the question of whether *Abood* should be overruled and public-sector "agency shop" arrangements invalidated under the First Amendment. The practical outcome of the *Janus* decision is likely to be that state laws such as Maryland's are deemed unconstitutional, and unions will no longer be able to collect mandatory "agency shop" representation fees from non-members.

In this context, MABE strongly opposes legislation to preemptively convert the process of allowing unions to promote membership into a mandatory subject of collective bargaining. This legislation would create a new contentious subject of bargaining resulting in new legal disputes between unions and school systems.

For these reasons, MABE urges an unfavorable report on Senate Bill 819.