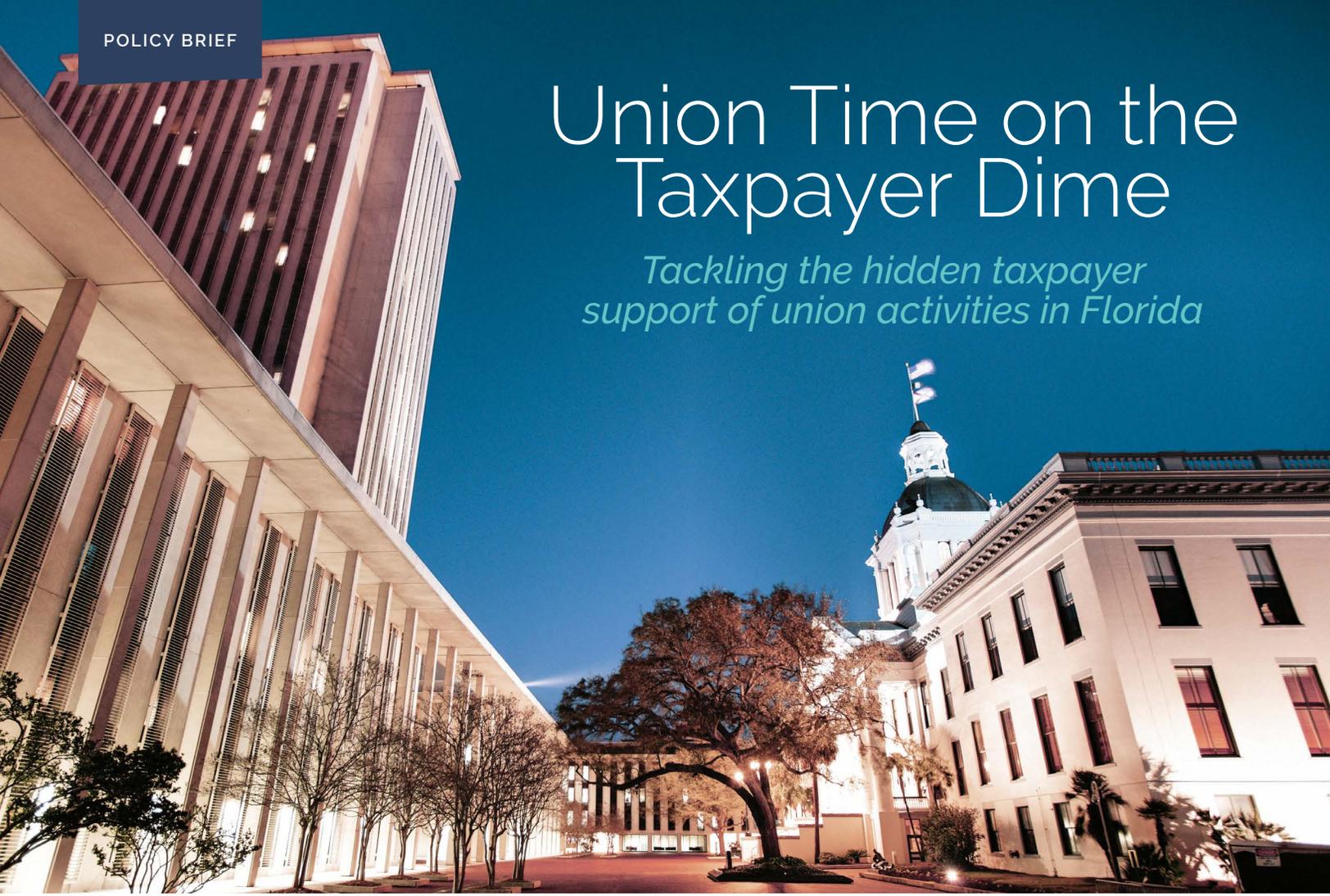


# Union Time on the Taxpayer Dime

*Tackling the hidden taxpayer support of union activities in Florida*



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Over the past 20 years, Floridians have consistently made conscious decisions about the type of government we want to leave to our kids, our grandkids, and their grandkids. Those decisions have, for the most part, focused on a commitment to limited government, low taxes, and economic liberty. From the governorship of Jeb Bush through Rick Scott (in collaboration with our leaders in the House and Senate), with very few exceptions we have sought to control the size and scope of government encroachment in our lives. That commitment has largely been effective at providing a consistent and healthy business climate, and a small footprint of government reach at both the state and local levels. Floridians largely enjoy a quality of life free of government intrusion.

That same philosophy has also extended to our status as a “right to work” state. Florida has embraced the notion that individuals should be able to secure employment without being coerced into joining a union against their wishes. Right to work status is not unique to Florida – in fact a national trend is occurring even in typically “union heavy” states to guarantee the rights of workers to be free of coercion from unions. In February 2017, the state of Missouri became the 28th state to join the ranks of the free.

A common misperception requiring correction is that being a right to work state doesn’t outlaw unions – it simply makes it the choice of an employee to join or support a union. Unions do successfully function in Florida, and they do so with the consent of their membership – exactly as they should. This works in both the public and private sectors.

A unique and challenging characteristic of public sector unions is that they are almost entirely funded through the collection of dues coming from the taxpayer-funded salaries of their members. This creates a dynamic in which – directly or indirectly – taxpayers can be funding the operations of an organization with which they fundamentally disagree. This conflict was articulated by no less an authority than Franklin Delano Roosevelt, who called the prospect of government unions striking against taxpayers “unthinkable and intolerable.”

Nevertheless, public unions do exist both in Florida and around the country. They are some of the most powerful and well-funded political machines we have ever had in our history. They bargain for worker contracts, engage in political activity, campaign for issues, and support candidates and causes. In doing so – they use taxpayer funds to push an agenda often at odds with the taxpayers footing the bill. This is a widely acknowledged and oft-cited debate among policy makers, union advocates, stakeholders, and taxpayers.

As that debate rages on, there exist tactics employed by unions leveraging their collective bargaining agreements that are even more duplicitous, create even deeper conflicts, and waste even more taxpayer dollars. They operate largely outside of the realm of public knowledge, and should be brought to light to ensure that every tax dollar is spent in the sunshine of accountability and transparency.

Each working day, government employees report for work but do not perform governmental duties. Instead, they work for a private enterprise void of any direct public purpose—their public-employee union. Taxpayers, however, are directly responsible for these employees’ compensation – even when they are performing non-public work.

It’s all part of an expensive government subsidy to labor organizations known as union “release time.” Some examples of what

public employees do while utilizing release time is astounding. In Austin, Texas, public employees have been paid to perform union activities that include attending retirement barbecues and fishing tournaments.<sup>1</sup> In Missouri, government employees have taken part in the National Education Association’s comprehensive lobbying strategy, specifically, against Right-to-Work and Paycheck Protection laws that advance worker freedom.<sup>2</sup> So, taxpayer dollars are being used to engage in political advocacy the sole purpose of which is to increase the size and cost of taxpayer-funded government.

Under Florida’s right to work law, public employee unions in Florida cannot force non-members to pay dues they may not support or have had the chance to vote on as a condition of employment.<sup>3</sup> However, Florida municipalities give public employee unions access to millions of taxpayer dollars. Each year, unbeknownst to most Floridians, tax dollars are funneled to government unions in the form of release time.

Release time allows public employees to conduct union business during working hours without loss of pay. Due to the poor tracking of release time activities, it amounts to a no-strings attached multi-million-dollar taxpayer-funded subsidy to government unions, which are actually private organizations. It places no obligation on public employee unions to provide anything in return to the public, and local governments exercise little to no control over its use.

The business conducted on release time has no public benefit – it exclusively serves the interests of government unions. At a time of increasing scrutiny at all levels of taxpayer funding in Florida,

organized labor, not taxpayers, should incur those costs. Yet, release time sticks taxpayers with the tab for private union activity.

Union release time is a blatant misuse of taxpayer money, overtly directing taxpayer dollars and human resources to perform activities that only promote the unions’ interests. These activities are frequently in stark contrast to the interests of the taxpayers footing the bill. It stands to reason (and common sense) that taxpayer funds should be reserved for public purposes, not the private benefit of individuals, corporations, or associations. While this challenge is one not germane to Florida, it is one that can be addressed by policymakers – Florida should eliminate, or at the very least severely curtail, release time. In addition, transparency and accountability through more rigorous record-keeping would ensure that any abuse is addressed. Florida’s courts also have a role to play.

Many of the activities performed on release time by public employees conflict with taxpayers’ interests, causing us to fund political activity we in fact oppose. As a general example, unions typically support greater levels of government spending and policies

■ The county's failure to track what activity public employees undertake while being paid by the taxpayer demonstrates a complete lack of both transparency and accountability over the practice.

that restrict worker choice, such as forcing non-members to pay dues as a condition of employment. More government spending means more potential public sector union members and union dues payments, a rather overt conflict of interest. In a recent (and egregious) case, Missouri taxpayers subsidized government employees to lobby legislators to vote against right to work and paycheck protection laws.<sup>4</sup>

Release time works against the public interest in another way. When release time is used to negotiate contracts, taxpayers are effectively funding both sides of the negotiations—a public employee union, subsidized via release time, negotiates for more wages and benefits opposite a public employer that is also funded by the taxpayer. As a result, the taxpayer has no voice in matters that determine government employee pay and benefits (or accountability), which greatly impact tax rates, government debt, and the quality of government services.<sup>5</sup>

Subsidizing union activity via release time also encourages the filing of frivolous grievances. In using resources (time and money) they don't have a direct financial stake in, there exists no incentive to weigh the merit of a possible grievance, and the calculation of probability of success against the resources required. When the taxpayer covers the costs of the grievance procedure, unions do not need to exercise any prudence about which grievances they choose to file.

## The Price of Release Time Revealed

This report focuses on three Florida municipal employers that grant release time to unions as part of collective bargaining agreements (CBAs). Generally, Florida CBAs permit release time for activities such as preparing and filing grievances, administering union contracts, negotiating contracts, and attending union meetings and conferences. Permitted activities, activities for which release time is actually used, and the amount of release time vary across CBAs.

Florida's municipal governments do not publicize the cost of union release time. The only way for taxpayers to examine the cost and number of hours granted is to submit a public records request. Researchers with The Competitive Enterprise Institute requested information from several local governments on the number of hours of union release time, activities that release time paid for, and the cost. Public records requests were sent to Miami-Dade County, the City of Jacksonville, and the City of Tampa. An overview of responses follows.

## MIAMI-DADE COUNTY

By far, the largest release time costs and hours spent on union business came from Miami-Dade County, the largest county in Florida. In FY 2014, FY 2015, and FY 2016, Miami-Dade County employees spent nearly 100,000 hours on release time each fiscal year, at a cost to taxpayers of \$3.2 million, \$3.1 million, and \$2.9 million, respectively.

Remarkably, a substantial amount of release time pays for government employees who spend 100 percent of their time performing union business. In the past three fiscal years, Miami-Dade County spent over \$600,000 per year on 100-percent release time employees. A small portion of release time costs were reimbursed to the county—\$87,895 in FY 2014, \$119,916 in FY 2015, and \$34,968 in FY 2016.<sup>6</sup>

Year	Locality	Hours	Cost
FY 2014	Dade-County	101,489	\$3.2 million
FY 2015	Dade-County	96,222	\$3.1 million
FY 2016	Dade-County	93,956	\$2.9 million
FY 2014	Jacksonville	14,853	\$399,245
FY 2015	Jacksonville	13,071	\$341,980
FY 2016	Jacksonville	12,824	\$314,677
FY 2014	Tampa	8,612	\$285,925
FY 2015	Tampa	5,939	\$188,797
FY 2016	Tampa	10,580	\$366,771

More concerning than the actual dollar figures is the fact that Miami-Dade County officials do not track or record what activity takes place on union release time. The county's failure to track what activity public employees undertake while being paid by the taxpayer demonstrates a complete lack of both transparency and accountability over the practice.

■ Figure 1

Cost of union release time in Miami-Dade County, categorized into the cost per bargaining unit

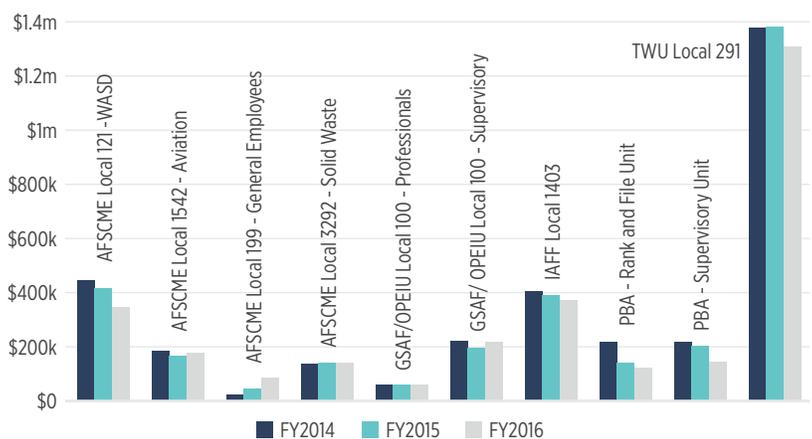


Figure 2

Hours spent on union release time in Miami-Dade County, categorized into hours per bargaining unit

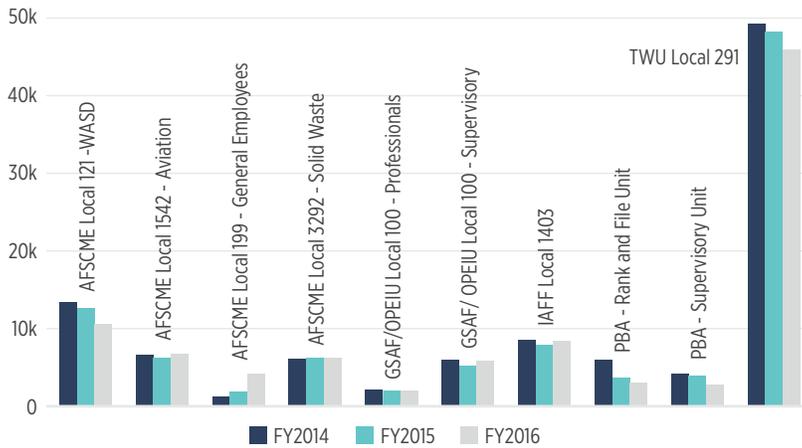


Figure 3

Cost of union release time in the City of Jacksonville

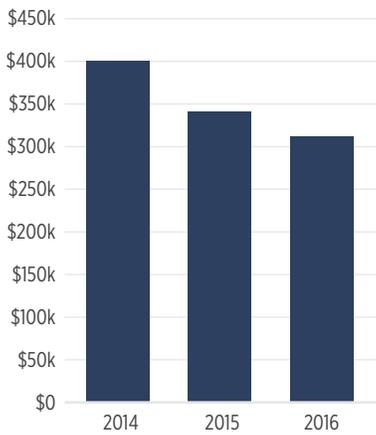


Figure 4

Hours spent on union release time in the City of Jacksonville

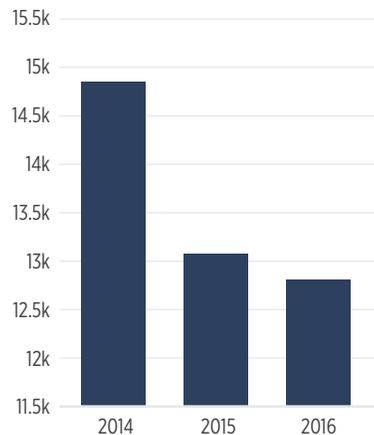


Figure 5

Cost of union release time in the City of Tampa

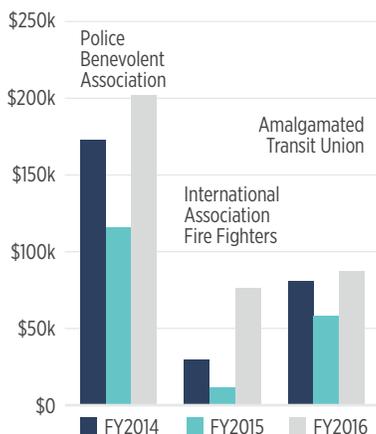
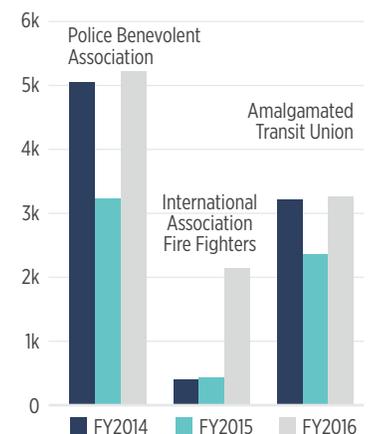


Figure 6

Hours spent on union release time in the City of Tampa



## CITY OF JACKSONVILLE

In the three years examined, City of Jacksonville employees spent approximately 12,000 to 15,000 hours per year on union activity instead of actual government work. This resulted in a direct cost to taxpayers of \$399,245 in FY 2014, \$341,980 in FY 2015 and \$314,677 in FY 2016. The majority of release time was used by the Jacksonville Fire and Rescue Department and Office of the Sheriff. As with Miami-Dade County, records did not exist related to what union activities were performed.

## CITY OF TAMPA

In Tampa, release time cost taxpayers \$285,925 in FY 2014, \$188,797 in FY 2015, and \$366,771 in FY 2016. These costs cover release time used by the Police Benevolent Association, International Association of Firefighters, Amalgamated Transit Union, the Tampa Police Department, Fire Department, and employees represented by the American Transit Union. Tampa public employees spent roughly between 6,000 and 10,500 hours per year in the past three years working on union activities as opposed to the functions of their taxpayer-funded occupation. The City of Tampa also did not keep records related to the activity performed on release time.

## Activities Performed on Union Release Time

According to public records released by the three local governments, activities performed on union release time are neither tracked nor recorded. This lack of control and oversight makes it impossible to completely discern whether employees are engaging in appropriate use of release time.

Various public handbooks and collective bargaining agreements provide a glimpse into what activities may be performed on union release time. According to the Miami-Dade County "Leave Manual," employees are authorized to "participate in labor management committee meetings, collective bargaining sessions, the processing of an employee grievance, or other activities as specified by collective bargaining agreement."<sup>7</sup> Negotiated release time activities that are specified by collective bargaining agreements include attending union conventions and time to administer union contracts.<sup>8</sup>

The City of Tampa's collective bargaining agreements permit release time to be used for "attending conven-



tions, meetings, grievance hearings, contract negotiations, and City Council meetings regarding the resolution of collective bargaining impasse procedures, and other authorized Union business provided that the efficiency of the City operations shall not be interfered with.<sup>9</sup>

The city of Jacksonville collective bargaining agreements allow release time to be used to “investigate and settle grievances.”<sup>10</sup> Local union presidents or an alternate may take reasonable time off to attend to “appropriate Union activities requiring his/her presence.”<sup>11</sup> Some Jacksonville bargaining units are also granted a pool of discretionary release time for unrestricted use. For example, the Fraternal Order of Police (F.O.P.), which represents rank and file corrections officers, is granted 2,500 hours of release time to be used “by any member of the F.O.P. for F.O.P. activities.” The F.O.P. CBA that covers police officers up through the rank of sergeant grants a release time pool of 3,000 hours.<sup>12</sup> Neither CBA sets parameters on what activities are permitted or prohibited for its pool of release time.<sup>13</sup>

## How to End Union Release Time

Florida policymakers have three possible options to eliminate union release time. The simplest mechanism would be for the Florida Legislature to enact policy that would prohibit (or provide more stringent layers of accountability and transparency for) a scheme that amounts to nothing more than a taxpayer-funded union subsidy.

Another option is for public employers to simply stop including release time in contracts or greatly reduce the amount offered during collective bargaining negotiations. There is no obligation on Florida government employers to provide union release time to government employee unions. Miami-Dade County offers the first such opportunity, where nearly all CBAs are set to expire in September 2017.<sup>14</sup> County negotiators can and should seize this chance to improve their stewardship of taxpayer dollars.

## Florida’s Constitution May Prohibit Union Release Time

Another route to end union release time is via the courts. Florida’s constitution contains a provision known as the Gift Clause, which may provide a means to challenge the practice of release time in court. The Gift Clause bans state and local government from giving away public money to private enterprise. In 1875, the Florida Constitution was amended to state:

Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person.<sup>15</sup>

In other states with gift clauses in their constitutions—47 in all—lawsuits have been filed against release time using the Gift Clause. For example, current lawsuits against release time are in the initial stages in the state of New Jersey, New York, Pennsylvania and Texas.<sup>16</sup>

Meanwhile, in Arizona, the Goldwater Institute had initial success in court to halt the practice of release time. The city of Phoenix had been granting the Phoenix Law Enforcement Association (PLEA) release time to the tune of nearly \$1 million annually.

In 2013, a trial was held to examine the constitutionality of union release time in the Maricopa County Court. Judge Katherine Cooper ruled release time unconstitutional. She applied a two-part test of public expenditures to examine whether release time aided the private interests of the PLEA and is illegal under the state’s gift clause. In Arizona, a public expenditure must support a public purpose and the public must receive proportionate, quantifiable, and direct benefit for the aid given. Judge Cooper ruled that PLEA uses release time to advance its own interests and found that rather than serving a public purpose release time “diverts resources away from the mission of the Phoenix Police Department, which is the safety of the community.”<sup>17</sup>

In 2015, the Arizona Court of Appeals also held that release time

is an unconstitutional public expenditure.<sup>18</sup>

In Florida, taxpayers have standing to challenge governmental action if they meet at least one of two criteria: 1) the taxpayer suffers special injury, differing in impact from other citizens and taxpayers, or 2) the lawsuit is based on a constitutional challenge that relates to taxing and spending powers.<sup>19</sup> Florida taxpayers likely would gain standing based on the second criterion. Florida municipalities use tax dollars to fund release time and the Gift Clause is a constitutional provision that governs the government's spending powers.



In *Bailey v. City of Tampa* (1926), the Florida Supreme Court provided the history of the Gift Clause's adoption. Prior to the Gift Clause, the state of Florida (and numerous local governments) became stock- or bondholders, or otherwise held interests in railroads, banks, and other businesses. Those commercial businesses in which Florida governments had a stake were managed poorly or went out of business. As Florida's Supreme Court held in that case:

[A]s a result, the state, counties, and cities interested in them became responsible for their debts and other obligations. These obligations fell ultimately on the taxpayers. Hence the amendment, the essence of which was to restrict the activities and functions of the state, county, and municipality to that of government, and forbid their engaging directly or indirectly in commercial enterprises for profit.<sup>20</sup>

Essentially, the Gift Clause intends to limit how elected officials may dole out public funds. Following are some examples in which Florida courts have issued decisions upholding that principle.

In 1952, the Florida Supreme Court, in *Florida v. North Miami*,

voided bonds for the purchase of land for erecting a private industrial plant because it violated the Gift Clause. The Court concluded:

We hold that the proposed certificates of indebtedness and the lease are void because: first, the proposal to attempt to use the power of the municipality and the proceeds from the certificates of indebtedness to purchase land and erect an industrial or manufacturing plant thereon for the use of a private corporation for private profit and gain does not serve a public or municipal purpose, and, second, Section 10, Article IX of the Constitution provides: "The Legislature shall not authorize any city to obtain or appropriate money for, or to loan its credit to, any corporation." Manifestly, the project in question could not have been legally authorized by the Legislature, and certainly the power of the Town of North Miami, in the matter, could not be extended to the exercise of a power which the Legislature could not validly confer. Hence, the project contemplated is in plain violation of the spirit and letter of Section 10, Article IX of the Constitution.<sup>21</sup>

Another Florida Supreme Court case, *State v. Clay County Development Authority* (1962), involved a county development authority that attempted to issue revenue bonds to finance an industrial plant that the county planned to lease to a private company. In striking down the financial arrangement as unconstitutional, the Court stated:

The dominant and paramount purpose is to lend the credit of the county to a private corporation to finance a private enterprise for private profit which will be under the exclusive control and in the exclusive possession of such enterprise for more than twenty-five years. The only possible public purpose which it serves is to promote the general development of the area by furnishing employment to the residents of Clay County. This is the factor which prompted the project. If we approve the issuance of bonds by the public authorities of this State to build and finance private enterprises and put such enterprises in the exclusive possession and control of such leases as is proposed to be done here, in order to alleviate unemployment and to promote the economic development of the area, then there is no limit to the extent to which the credit of the State and its authorities may be extended to private interests. In such event the constitutional provision above quoted will become meaningless.<sup>22</sup>

In general, Florida's Gift Clause is satisfied, and government may finance private enterprise, when the project serves a public purpose, such as furthering economic development or achieving public health goals. The government must retain sufficient control over the project to justify the expenditure, and the public must receive some consideration in return.<sup>23</sup>

For nonprofit organizations, which include labor unions, to legally receive taxpayer dollars and not violate the Gift Clause, the general public must have access to the funded programs and the private organization must not unduly profit from the publicly funded activity.<sup>24</sup>

An opinion issued by then-Florida Attorney General Jim Smith articulated an acceptable use of public funds to nonprofits in the state:

For example, in *Raney v. City of Lakeland*, supra, the Florida Supreme Court upheld the constitutionality of a long-term lease for nominal consideration of publicly owned land to a nonprofit corporation for the purpose of establishing and maintaining a public horticultural library. In approving the transaction, the court observed that the corporation, a garden club, had "agreed to maintain a service for ... the benefit of the public generally." 88 So.2d 180. In addition, it was noted that the garden club was "quasi-public in nature" and under the terms of the lease the club was obligated "to render a public service unlimited and unrestricted to its own membership." *Id.* at p. 151. Compare *O'Neill v. Burns*, supra, in which the Florida Supreme Court invalidated a \$50,000 legislative appropriation to the Junior

Chamber International, a nonprofit corporation, for the purpose of constructing a permanent headquarters building for the organization. The court distinguished the *Raney* decision and noted: "In the cause before us there is no obligation that the building or lands involved are to serve any public agency or the public generally."<sup>25</sup>

Union release time shares many characteristics with the above examples of public schemes that were voided under the Gift Clause. Florida government employers exercise very little oversight or control over how unions use release time. Release time promotes unions' private interests at the taxpayer's expense. The public receives no tangible, quantifiable benefit from the expenditure of tax dollars to finance union business.

## Conclusion

Regardless of the state of the economy – whether high-growth or recessive, government should always be searching for methods to be better stewards of taxpayer funds, and cut expenses for activities that do not advance a public purpose. Under union release time, Florida municipalities pay government employees to perform activities unrelated to their public duties. Use of release time is poorly tracked, and costs Florida taxpayers millions of dollars each year. The Sunshine State has the tools at its disposal to put an end to the practice of giving away scarce taxpayer resources to private entities for private benefit. It is now time to use those tools.

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