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Representing America's Finest

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Supreme Court Rules Against Unions in *Janus v. AFSCME*

On June 27, the U.S. Supreme Court issued its decision in the Janus case (*Janus v. AFSCME*). In a 5-4 decision, authored by Associate Justice Samuel Alito, the Court overruled its 1977 decision in *Abood v. Detroit*, holding today that: “The State’s extraction of agency fees from nonconsenting public-sector employees violates the First Amendment. *Abood* erred in concluding otherwise, and *stare decisis* cannot support it. *Abood* is therefore overruled.”

Because this is a First Amendment case, decided by the U.S. Supreme Court, this decision is binding in every State.

The Court also rejected arguments raised by NAPPO and others in its *amicus curie* brief, finding that: “Neither of *Abood*’s two justifications for agency fees passes muster under this standard. First, agency fees cannot be upheld on the ground that they promote an interest in “labor peace.” and, “Second, avoiding “the risk of ‘free riders,’ is not a compelling state interest. Free-rider “arguments . . . are generally insufficient to overcome First Amendment objections,”

The Court’s opinion did recognize, though, that Unions are free to refuse to represent non-members in disciplinary matters, and to charge non-members for the cost of representing them if the Union chooses to do so. (footnote 6, page 17). [*Please note that the Court’s majority opinion language, which recognized this right of unions to refuse to represent non-members in disciplinary matters (or charge a fee for doing so) was somewhat clouded by the fact that the accompanying footnote referred to two State statutes authorizing this, and not union policies themselves. So right-to-work activists may try to argue that this means States must authorize this in law, although the opinion itself doesn’t say this.*]

On the bright side, as the Court itself recognized, unions can be and are successful in states where agency fees are already prohibited, and that certainly includes many of our NAPPO member organizations’ states.

Now, more than ever, we need to turn to our own internal strengths within NAPPO, and our member associations in right-to-work states have an obligation to assist and education their sister organizations in states that will now prohibit agency fees. NAPPO’s upcoming Convention in San Diego July 14-17 and our Fall Legal Seminar November 14 – 16 in Las Vegas are great places to start.

Click [here](#) to view the full decision.

Supreme Court Rules on Warrants for Cell Location Data

On June 22, the U.S. Supreme Court ruled that law enforcement must get a search warrant, with exceptions for emergencies, to have access to an individual's "cell site location information". The 5-4 majority decision in *Carpenter v. United States*, written by Chief Justice John Roberts, stated that cellphone location information is a "near perfect" tool for government surveillance and individuals have the right to expect privacy regarding their day-to-day, minute-to-minute movements – data which cellphone providers routinely collect to improve service.

Chief Justice Roberts stated that law enforcement can still collect that data without a warrant in emergencies such as "the need to pursue a fleeing suspect, protect individuals who are threatened with imminent harm, or prevent the imminent destruction of evidence." Further, the decision specifically states that the ruling does not apply to security cameras, business records or real-time location tracking.

The case, *Carpenter v. United States*, was brought by Timothy Carpenter, who was convicted of robbing a string of Radio Shack and T-Mobile stores after the FBI used three months of cellphone location data to show that he was near each store at the time of the crime. Carpenter argued that since the FBI did not get a search warrant for that data, the evidence and his conviction should be thrown out. At the time of his conviction, the prevalent legal theory was that cellphone location data was not protected by the 4th Amendment because an individual was willingly sharing his location data with a third party he could not have an expectation his information would remain private.

This ruling by the Supreme Court comes as NAPO is fighting efforts in Congress to mandate a search warrant for all electronic content, without exceptions for exigent circumstances like those laid out by Chief Justice Roberts. NAPO will continue to work to ensure law enforcement's access to the tools necessary for generating leads, solving crimes, and finding missing people is balanced with measures to protect privacy.

NAPO Participates in DOJ Law Enforcement Briefing

On June 21, NAPO Director of Governmental Affairs attended a law enforcement briefing at the Department of Justice (DOJ), led by Associate Deputy Attorney General Steve Cook, with opening remarks by Attorney General Jeff Sessions and presentations by Associate Attorney General Jesse Panuccio, Assistant Attorney General for the Office of Legal Policy Beth Williams, and Office of Community Oriented Policing Services (COPS) Director Phil Keith.

Associate Attorney General Panuccio is the number three in charge at the DOJ and the head of the Civil Division, which includes the Civil Rights Division. He updated the group on the Department's work to crack down on sanctuary cities, including the current lawsuits regarding the withholding of Byrne JAG and COPS funding from sanctuary cities. Associate Attorney General Panuccio also spoke on the new direction of the Civil Rights Division and its focus on ensuring state and local governments and agencies maintain control and decision making ability in any interaction with the Division.

Assistant Attorney General Williams spoke on the Department's efforts with the Federal Bureau of Prison (BOP) to test cellphone jamming technologies, and her staff spoke on the Department's position on prison reform, specifically the FIRST STEP Act, legislation that NAPO and much of the law enforcement community opposes. In expressing the Department's concerns with the bill, Office of Legal Policy staff highlighted the recent Bureau of Justice Statistics report on the 9-year recidivism rate of state prisoners, which is a staggering 83 percent. The study, [2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period \(2005-2014\)](#), also found that 77 percent of released drug offenders were arrested for a non-drug crime within nine years, and 34 percent were arrested for a violent crime. Much of the reforms included in the FIRST STEP Act are modeled after state prison reform programs and would similarly make States and localities the dumping ground for federal criminals

without providing the safeguards, support and resources that would be necessary for communities to handle the influx of newly released inmates or deal with recidivism.

Lastly, COPS Director Phil Keith updated the group on the National Blue Alert Network and their plan to get all 50 states to have Blue Alert plans by July 2019. NAPO sits on the Advisory Group for the National Blue Alert Network and had a hand in developing the action plan. Director Keith will be addressing this issue during his presentation at our Annual Convention in San Diego in July and will be asking our members to play an active role in ensuring Blue Alert's success.

This briefing is just another example of the importance the DOJ, under Attorney General Sessions, places on its partnership and relationship with state and local law enforcement. It was a detailed and candid discussion and NAPO appreciates the opportunity to be an active participant at the table.

NAPO Attends FBI School Safety Summit

On June 27, NAPO attended a School Safety Summit hosted by the FBI and the Department of Justice. The School Safety Summit was a follow-up to the roundtable discussion NAPO participated in with the Attorney General in March to deliberate on the best practices and policies for ensuring school safety. It was an opportunity to discuss at length the issues we identified as most important to address regarding school violence, including:

- Troubled students - Warning signs and Behavioral Indicators
- Crisis Intervention - Threat Assessments
- Information sharing - What's working, What's not
- Role of school resource officers (SROs), school crisis response plans, law enforcement response
- BJA and COPS-Grants and technical assistance

The Summit started with a presentation by the FBI's Behavioral Analysis Unit on a report it just released – [*A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013*](#) – which assessed the pre-attack behaviors of active shooters to address the question of “how do the active shooters behave before the attack?” and, if possible, “why did they attack?” This was followed by a discussion on the need for a unified message and public service campaign similar to the “If you see something, say something” campaign.

The need for a unified message came up often in the day's discussions, including a presentation by the Colorado Division of Homeland Security and Emergency Management on their Safe2Tell program (<https://safe2tell.org/>), which the State established after the Columbine tragedy in 1999. The Safe2Tell program ensures that all Colorado students, parents, teacher and community members have access to a safe and *anonymous* way to report any safety concerns, with a focus on early intervention and prevention.

Another significant focus of the Summit was on the hardening of schools, the role of SROs and crisis response plans, with the role of SROs and crisis response plans tying together with information sharing and partnerships between school administration, law enforcement and public health officials. The Indiana Sheriff's Association gave a presentation on the “safest school in America” in Shelbyville, Indiana, which has a first-of-its-kind security program that includes bullet resistant glass and doors, security cameras, panic buttons in each classroom and a school-wide alarm.

Aside from hardening our schools, school safety plans and threat assessment plans were identified as necessities to help prevent future school shootings. SROs, a safety resource in and of themselves, can play a significant role in the local law enforcement agency's understanding the safety plans of the schools in their district and in information sharing between law enforcement and school administrators.

The Summit provided for an exchange of best practices and a robust discussion of the role of law enforcement in ensuring our students, teachers and school staff are safe. Every participant agreed that this does not fall on law enforcement's shoulders alone; but that law enforcement must work in partnership with school administrators, the community and public health officials to truly make our schools safe. It is the hope that this meeting, and subsequent collaboration between the organizations that participated, will result in a nationally recognized list of recommendations to boost school security.

Get Discounted Tickets to Watch the Padres Take on the Cubs

We look forward to seeing you in San Diego at NAPO's 40th Annual Convention! The convention kicks off with a welcome reception that will be held at the Manchester Grand Hyatt on the Coronado Patio, Saturday, July 14 from 5:00 p.m. – 7:00 p.m.

For those interested in seeing a baseball game at Petco Park, the Cubs will be playing the Padres Saturday evening at 7:10 p.m. NAPO has reserved 100 seats in section 133 and negotiated a great ticket price offering significant saving off regularly published prices. The tickets are available for purchase for anyone registered to attend the NAPO Convention.

If you are interested in seeing the Padres vs Cubs, please use this link <https://groupmatics.events/event/napo> to purchase tickets. The game is expected to be a sellout so please purchase tickets by July 8.

If you have not yet registered for Convention, this is your last chance. Register by July 3 to avoid late fees. You can [register online via NAPO's website.](#)

NAPO Opposes Reintroduction of Bill Imposing Onerous Public Pension Requirements

Congressman Devin Nunes (R-CA) is once again calling for public pension reform and is urging his colleagues to support the Public Employee Pension Transparency Act (PEPTA), which he is planning on reintroducing. This bill would set a dangerous precedent regarding unfunded federal mandates, taxation of municipal bonds, and intrusion into the operations of state and local governments. NAPO joined other members of the Public Pension Network in sending [a letter to House leadership](#), copying every member of Congress, urging Speaker Paul Ryan (R-WI) to oppose the bill and any efforts to add it to other legislation under consideration.

NAPO and other members of the Public Pension Network have been making the rounds to members of the House and Senate who sit on the Joint Select Committee on the Solvency of Multiemployer Pensions Plans to educate them on the difference between private, multiemployer pension plans and public pension plans and to ensure that public pensions remain outside the scope of the work of the Committee. A small minority of Committee members have called for the Committee to address public pensions and we are concerned that PEPTA may make its way into the Committee's final recommendations. Congressman Nunes' efforts to revive PEPTA adds to our concerns.

NAPO has long voiced our strong opposition to the public pension requirements contained in PEPTA as they do not protect benefits, save costs or improve retirement system funding. They are a costly, inappropriate federal intrusion into areas that are the fiscal responsibility of sovereign States and local governments, and are conflicting, administratively burdensome and costly. Further, it threatens to eliminate the tax-exempt bonding authority of state and local governments.

PEPTA not only violates the principles of federalism but represents a fundamental lack of understanding regarding state and local government operations and financing, including governmental accounting rules and strict legal constraints already in place that require open financial reporting and processes. It also ignores the fact that every state and countless localities have recently made modifications to pension financing, benefits structures, or both.

NAPO will continue to work with our partners in the Public Pension Network to fight PEPTA and ensure it does not find a way to move forward. If you have any questions about PEPTA or NAPO's work with the Public Pension Network, please contact Andy Edmiston at aedmiston@napo.org.

NAPO on the Hill: WEP Reform, Asset Forfeiture Funding, Face Recognition Technology,

Windfall Elimination Provision (WEP) Reform

NAPO met with House Ways and Means Committee staff for both Chairman Kevin Brady (R-TX) and Ranking Member Richard Neal (D-MA) to discuss the new proposal to reform the WEP. In the 114th Congress, Chairman Brady introduced legislation, the Equal Treatment of Public Servants Act, that would repeal the WEP, replacing it with a new Social Security benefit formula designed to more accurately account for years a public employee paid into Social Security versus the years paid into a public pension system in a non-Social Security covered position. As a result of this change, the Social Security actuary has projected that the majority of current retirees impacted by the WEP would see roughly one-third of their benefit restored. However, there would have been a minority of public safety officers who would continue to see their benefits cut under that new formula.

While NAPO supported the bill as it would benefit the large majority of our members, national unions such as SEIU and AFSCME opposed it due to the minority of public employees who would not have benefited under the new formula. Chairman Brady did not want to move forward with a bill that did not have unanimous support of the Committee and the unions' opposition caused several Democrats to oppose it.

WEP reform remains a priority for Chairman Brady and Ranking Member Neal and they have developed a compromise proposal – still in concept form – that they hope will win support from all sides. The proposal creates two distinct groups of retirees. The first – individuals age 55 and younger – would have their WEP calculated using the new formula created under the Equal Treatment of Public Servants Act, which will go into effect in 2025. The second group, consisting of individuals age 56 and older as of 2020, will keep the current WEP formula and get a monthly rebate to help make up for part of the lost benefits due to WEP. The rebate would be \$100/month (or \$50/month for a spouse) and subject to cost of living increases. The new proposal tries to strike a balance and ensure all retirees would receive their rightfully earned benefits.

The only workers who would not benefit are those who have worked in a covered job for 30 or more years who are currently exempt from the WEP as the proposal would eliminate that exemption. Those workers would fall under the two categories of retirees created by the proposal and be subject to WEP. This would impact our members who work in states where public employees are covered by Social Security. There are fifteen states where public employees are not covered by Social Security: Alaska, California, Colorado, Connecticut, Georgia, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Missouri, Nevada, Ohio, Rhode Island and Texas.

WEP adversely affects public safety employees in particular. Although most law enforcement officers retire after a specific length of service, usually while in their early to mid-fifties, many look for new opportunities to serve their communities. Yet, when they retire from a non-Social Security paying job and move to one that does pay into Social Security, they are penalized by the WEP. Instead of receiving their rightfully earned Social Security retirement benefit, their pension heavily offsets it, thus vastly reducing the amount they receive.

While NAPO continues to advocate for full repeal of the WEP and the government pension offset (GPO), we understand there are significant fiscal challenges associated with this effort. We have therefore worked closely with other public sector organizations to find common ground on a meaningful WEP reform proposal. This collaboration, together with the leadership of both Chairman Brady and Congressman Neal, has resulted this WEP reform proposal. We are continuing to work to ensure that none of our members lose on this proposal.

Committee staff indicated that once they are able to get all sides on board, the Chairman will hold hearings on the bill. We look forward to working with the Committee staff as they move forward with the proposal.

DOJ Asset Forfeiture Fund

NAPO opposed the Music Modernization Act (S. 2823 / H.R. 5447) because it would take \$47 million from the Department of Justice Asset Forfeiture Fund to pay for the cost of the bill, which has absolutely nothing to do with law enforcement. The bill relates to the payment of royalties to record labels and artists and for other music industry-related purposes

While we cannot speak to the merits of the underlying bill, the use of unobligated money from the DOJ Asset Forfeiture Fund caught our attention.

The DOJ Asset Forfeiture program provides State and local agencies with a means to participate in federal task forces, account for costs associated with investigations, training, equipment, drug awareness and support community-based programs. Any unobligated funding within the program must remain in it for future use and maintain its original purpose - to assist state and local law enforcement thwart and deter serious criminal activity and terrorism, engage their communities, and better train and protect their officers. The Asset Forfeiture program should not be used as a bank to fund unrelated music-industry issues.

With the Senate Judiciary Committee scheduled to mark up the bill on June 28, we raised our concerns with the bill's sponsor, Senator Orrin Hatch (R-UT), as well as Committee Chairman Charles Grassley (R-IA) and Ranking Member Dianne Feinstein (D-CA). A significant number of Committee members shared our concerns with the use of the Asset Forfeiture funds to pay for the bill and we were able to get the provision struck from the bill in an amendment during Committee consideration.

We appreciate Senator Hatch and Chairman Grassley considering and understanding our concerns with that section and agreeing to remove it from the bill.

NAPO wanted to make certain we went on record to state that we strongly oppose the raiding of the DOJ Asset Forfeiture Fund to pay for unrelated, non-law enforcement issues in the hopes of ensuring such efforts will not be attempted in the future.

Face Recognition Technology

NAPO met with Senator Kamala Harris' (D-CA) staff regarding legislation the Senator plans on introducing that would regulate how law enforcement uses face recognition technology. The Senator's staff reached out to NAPO to get our thoughts on the proposed legislation, which would limit the circumstances in which law enforcement can use targeted face recognition in conjunction with an arrest photo database and would require a court order for law enforcement to use the DMV database.

NAPO supports the creation of a national policy regarding the use of face recognition technology, but we are concerned that the bill Senator Harris is proposing would slow down and hamper law enforcement investigations. Further, the bill is looking to address future issues with the technology that the Senator is assuming will arise, such as the interface of the technology with body worn cameras. Unfortunately, the underlying assumption is that law enforcement and governments will abuse the technology and infringe on individual's civil rights and that the use of the technology will lead to a greater persecution of minority rights. NAPO expressed our serious

concerns with the staff and although the staff appreciated our position, it seems unlikely that the bill will change prior to introduction.

Much like our work around electronic communications reform, NAPO supports higher standards and a protection of privacy, but law enforcement's needs must be considered and taken into account. It again comes down to balancing the ability of law enforcement to do its job and protecting the rights and privacy of individuals. We continue to express our desire to work on these issues and ensure both sides' needs are met. We will keep our members updated on the status of this legislation.

Supreme Court Justice Anthony Kennedy Retiring

U.S. Supreme Court Justice Anthony Kennedy announced he is retiring from the Supreme Court on July 31, 2018. Justice Kennedy served on the Court for 30 years and was the swing vote on the nine-member court, often siding with the liberal justices on social issues.

The Supreme Court is currently in recess and will start its next term on October 1. President Trump has started interviewing candidates and announced that he will name a candidate to replace Justice Kennedy on July 9. The President is working off a list of 25 potential nominees, many of whom were considered to fill the spot left open by the death of Justice Antonin Scalia. Those involved in the process have indicated that there are five frontrunners:

Brett Kavanaugh, U.S. Court of Appeals for the District of Columbia Circuit
Thomas Hardiman of Pennsylvania, U.S. Court of Appeals for the Third Circuit
Raymond Kethledge, U.S. Court of Appeals for the Sixth Circuit
Amul Thapar of Kentucky, U.S. Court of Appeals for the Sixth Circuit
Amy Coney Barrett, U.S. Court of Appeals for the Seventh Circuit

NAPO will continue to monitor the situation and will update our members on who the nominee is and his or her potential impact on our issues that may come in front of the Supreme Court.

DOJ Releases FY17 Byrne JAG Funding

On June 27, Justice Department spokesman Devin O'Malley made the following announcement on the release of FY 17 Byrne Justice Assistance Grant (Byrne JAG) funding:

"The [stay of the nationwide injunction](#) granted last night by the Seventh Circuit is another major victory for the rule of law. When courts issue nationwide injunctions and order relief beyond the scope of a particular lawsuit, they overstep their role and improperly limit the government from functioning.

"The court order is also a victory for public safety, our nation's brave men and women of law enforcement, and the hundreds of jurisdictions across the country that make the common-sense commitment to help keep criminal aliens off their streets rather than endanger public safety by releasing them back into the community to further perpetrate crimes.

"After the stay was granted, the Justice Department promptly moved to begin the distribution of nearly \$200 million in Byrne JAG funds to jurisdictions that share the Department's commitment to keeping criminal aliens off our streets and our law abiding citizens safe. Reviews of some applications remain ongoing."

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