



Statement of:

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Before the United States House of Representatives

Committee on Oversight and Government Reform

Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy

Regarding

"Official Time: Good Value for the Taxpayer?"

June 1, 2011

## **Introduction**

Chairman Ross, Ranking Member Lynch, and Members of the Committee, thank you for holding this hearing and providing me the opportunity to discuss the issue of official time in the federal workforce.

My name is F. Vincent Vernuccio. I am Labor Policy Counsel at the Competitive Enterprise Institute (CEI) and editor of Workplacechoice.org. CEI is a non-profit, non-partisan public policy organization that focuses on regulatory issues from a free-market and limited-government perspective. Workplacechoice.org is a comprehensive, up-to-date website for news on labor regulations, private and government sector unions, pensions, and pro-worker legislation.

I was formerly Special Assistant to the Assistant Secretary of Administration and Management in the Department of Labor in the George W. Bush administration.

## **Summary**

Official time does not represent good value for taxpayers and does not serve the public interest. Title V of the U.S. Code allows federal government employees to perform union duties unrelated to their jobs while still being paid their official government salary, which is ultimately funded by the taxpayer. This process is called official time. There is no legislative or regulatory requirement for the government to report to taxpayers how much of this time is utilized by government unions.

Section 7131, 5 USC 71 of the Civil Service Reform Act of 1978 defines and authorizes official time for unions representing federal employees. According to the Office of Personnel Management (OPM,) “Official time, broadly defined, is paid time off from assigned Government duties to represent a union or its bargaining unit employees.”<sup>1</sup>

In fiscal year 2009, federal employees logged 2,991,378 hours for union work while still receiving a paycheck from the government. This cost taxpayers \$129,100,798 for work of no appreciable benefit to them.<sup>2</sup> Those figures represent time and money that could have been spent on the government’s administrative duties.

Taxpayers should not be forced to subsidize union activity. Congress should repeal the section of Title V that authorizes official time.

However, as long as official time is allowed, taxpayers should have easy access to detailed information on its usage and cost. Congress should require OPM to report official time usage on an annual basis and publish the findings online.

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<sup>1</sup> U.S. Office of Personnel Management, “Reporting Official Time for Labor and Management Relations,” OPM website, <http://www.opm.gov/lmr/OfficialTime.asp>.

<sup>2</sup> United States Office of Personnel Management, “Official Time Usage in the Federal Government; Fiscal Year 2009 Survey Responses, May 2011, pp. 12, 14, <http://workplacechoice.org/wp-content/uploads/2011/05/OPM-Official-Time-Survey-FY2009.pdf>.

## History

The federal government first allowed the unionization of its employees on January 17, 1962, when President John F. Kennedy signed Executive Order 10988.<sup>3</sup> In 1976, the Civil Service Commission (OPM's predecessor) directed agencies on how to authorize official time, and also instructed those agencies to establish methods to record it.

Legislative authority for official time derives from the Civil Service Reform Act of 1978, which codified it for government workers.<sup>4</sup>

Concerns about record keeping for official time have a long history. As far back as 1979, the General Accounting Office (GAO) recommended that OPM issue annual reports on official time, after it found that 18 of 26 bargaining units at four agencies had no record of official time usage.<sup>5</sup>

OPM then directed agencies to develop official time record keeping systems by January 1, 1982, when it issued a letter in the Federal Personnel Manual.<sup>6</sup> However, OPM did not establish a requirement for the agencies to report official time figures on an annual basis. In 1994, the Federal Personnel Manual was discontinued, as were any official time record keeping requirements. It should be noted that obligations to keep records do not constitute an obligation to report those records.

In 1998, the House Committee on Appropriations did direct OPM to prepare a one-time report on official time usage. OPM collected and analyzed official time over a six-month period from 70 Federal agencies. It submitted its findings to the Appropriations Committee in November 1998. In 2002, then-OPM Director Kay Coles James issued a memorandum requiring federal departments and agencies to report the amount of hours used for official time at the end of each fiscal year, September 30.<sup>7</sup> The memo stated:

The right of agencies to grant official time and the right of employees to use it on behalf of their unions creates a shared responsibility to the taxpayer. I believe that labor and management are equally accountable to the taxpayer and have a mutual duty to ensure that official time is authorized and used appropriately.

By the end of the George W. Bush administration, OPM required agencies to report their official time usage about one month after the end of the fiscal year, and then reported those findings in its *Official Time Usage in the Federal Government* report, generally published the following spring.

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<sup>3</sup> John F. Kennedy Executive Order 10988 Employee- Management Cooperation in the Federal Service <http://www.presidency.ucsb.edu/ws/index.php?pid=58926#axzz1NMSjffU>

<sup>4</sup> The Civil Service Reform Act of 1978 et seq. [http://www.opm.gov/biographyofanideall/PU\\_CSreform.htm](http://www.opm.gov/biographyofanideall/PU_CSreform.htm)

<sup>5</sup> Office of Personnel Management Summary Report: Official time for Representational Activates Fiscal Year 2002 [http://www.opm.gov/lmr/sumrep\\_fy02.asp](http://www.opm.gov/lmr/sumrep_fy02.asp)

<sup>6</sup> Federal Personnel Manual letter 711-161

<sup>7</sup> Memorandum from Office of Personnel Director Kay Coles James to Heads of Departments and Agencies "Official Time for Labor-Management Relations" June 17, 2002 [http://www.opm.gov/lmr/appx1\\_6-17-02.asp](http://www.opm.gov/lmr/appx1_6-17-02.asp)

However, under the Obama administration, OPM did not issue its “call and guidance for reporting of Fiscal Year (FY) 2009 time data” memorandum to federal departments and agencies until October 26, 2010,<sup>8</sup> about a year after the end of FY 2009. In contrast, the FY 2008 memo was issued on November 3, 2008, about a month after the end of that fiscal year.<sup>9</sup>

### **Taxpayers should not pay for union activity**

Official time amounts to a significant and inappropriate government subsidy for union activity, paid for by taxpayers. Our country is experiencing massive budget deficits. According to the Congressional Budget Office, the federal government incurred a deficit of \$871 billion for the first seven months of FY 2011. That is \$70 billion more than at the same time last year.<sup>10</sup> The debt now looms at over \$14 trillion, or over \$46,000 for every United States citizen.<sup>11</sup>

Salary and benefits alone for official time cost taxpayers \$120,730,471 in 2008 and \$129,100,798 in 2009, a 6.93 percent increase in just one year.<sup>12</sup> This is a minimum. It does not take into account the cost in management hours to administer official time, which could significantly raise these costs. This money could be better spent elsewhere.

The amount spent on official time for 2009 is equivalent to a workforce of around 1,500 unionized employees working full-time on union business but paid by the taxpayer.

The vast majority of hours—2.3 million, or 77 percent—of 2009 official time hours were spent on “General Labor Management,”<sup>13</sup> which OPM defines as, including “meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, labor relations training for union representatives, and union participation in formal meetings and investigative interviews.”<sup>14</sup> The taxpayer funding of several of these activities are inherent to union activity only, and provide no direct benefit to the public. Issues covered can be as petty as the number and availability of parking spaces.<sup>15</sup>

The second largest category of official time use is “dispute resolution.” This involves union representatives being paid by the federal government to represent employees who are facing disciplinary action or to file grievances against the agency or department. Federal employees

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<sup>8</sup> OPM FY 2009 report p.2

<sup>9</sup> *Id.*

<sup>10</sup> Congressional Budget Office Analysis “Monthly Budget Review” May 6, 2011  
[http://www.cbo.gov/ftpdocs/121xx/doc12172/2011\\_04\\_MBR.pdf](http://www.cbo.gov/ftpdocs/121xx/doc12172/2011_04_MBR.pdf)

<sup>11</sup> Knoller, Mark “National Debt Tops \$14 Trillion” *CBS News* January 3, 2011 [http://www.cbsnews.com/8301-503544\\_162-20027090-503544.html](http://www.cbsnews.com/8301-503544_162-20027090-503544.html)

<sup>12</sup> OPM FY 2009 report Appendix B p. 7

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> FAA Northwest Mountain Region, 55 FLRA 293 (1999) - Agency violated Statute by failing to comply with a final and binding arbitration award which had ordered agency to obtain 30 parking spaces for employee use. The agency was ordered to comply with the arbitration award and to obtain parking spaces within 60 days even if it costs them money to do so.

deserve representation in disputes with agency management, but if taxpayers are picking up the tab, it raises the question of how union dues are being used.

The final two categories for official time are the least utilized. These involve negotiating or amending collective bargaining agreements. In 2009, 169,272 hours of official time were spent on “Term Bargaining” and 84,546 on “Mid-Term Bargaining.”<sup>16</sup>

### **Civil Service protections make much official time activity redundant**

Civil Service Laws provide many protections to federal employees in areas where unions’ scope to negotiate is limited by statute. Federal employees do not bargain over wage, benefits, and many working conditions, which are key points of contentions for workers in the private sector and in many states. As OPM states:

Many of the terms and conditions of employment of a federal employee (including pay and benefits for most employees) are set by law and not subject to bargaining. Others are taken off the bargaining table by a broad management rights provision. See 5 U.S.C. 7106(a)<sup>17</sup>

The Civil Service Reform Act of 1978 grants protections for federal employees that obviate the case for many traditional union functions—and therefore decrease any need for official time. The Act covers merit system principles, personnel practices, labor-management relations, and myriad other workplace issues. The Act:

- Protects workers from discrimination of any kind (race, age, or gender);
- Requires merit for recruitment of a civil service position and advancement within the government;
- Protects civil servants from arbitrary action, personal favoritism, or coercion for partisan political purposes;
- Describes how labor and management should relate and settle appeals;
- Stipulates how back pay should be awarded in the case of unfair labor practices; and
- Describes in detail specific protections relating to work leave, disciplinary actions, and grievances and appeals.

The above provisions give federal employees many of the protections for which official time is supposedly needed. This renders the value of official time activities questionable for both federal workers and taxpayers.

### **Unions representing federal workers can afford to represent them without the help of taxpayers**

The OPM Official Time Usage report states:

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<sup>16</sup> OPM FY 2009 report appendix B p. 7

<sup>17</sup> OPM FY 2009 report p. 1

Membership in labor unions is therefore totally voluntary for Federal employees and, as a result, there are fewer incentives for Federal employees to join and pay union dues than there are for private sector and many state and local government employees.<sup>18</sup>

That statement seems to indicate that federal employee unions have trouble paying the bills and need handouts to operate, but that is far from the truth.

The American Federation of Government Employees' (AFGE) receipts in FY 2010 totaled \$103 million.<sup>19</sup> The National Treasury Employees Union's (NTEU) 2010 receipts that same year totaled \$39 million<sup>20</sup> and the National Federation of Federal Employees (NFFE) \$5.5 million.<sup>21</sup> These totals are only for the above unions' national headquarters and do not include receipts from locals. In addition, there are many other smaller unions that represent government employees.

Furthermore, each of these federal employee unions has thousands of dues-paying members. AFGE has a total membership of 280,292, NTEU 86,654, and NFFE 7,395. In 2010 AFGE spent less than a quarter—\$23.7 million—of its \$103 million on representational activities. It also spent \$4.1 million on political activities and lobbying. These unions do have the money to pay for the representation of their members. It is unfair to force taxpayers to foot the bill.

### **Congress should legislatively require OPM to issue annual official time usage reports.**

If official time is not revoked, Congress should enact legislation to mandate its reporting. As OPM makes clear in its FY 2009 official time report, currently there is no requirement to publish the numbers. In its report, OPM states, "There are no legal or regulatory requirements to publish any official time data. OPM *chose* to issue the call and guidance for Fiscal Year 2009 data" [emphasis added]. It further states that, "There are no legal or regulatory requirements to publish this report."<sup>22</sup>

OPM's acknowledgment of its not being required to publish the report clearly indicates that the agency could discontinue it at its discretion. The need for the report is twofold.

First, taxpayers should be able to know how many of their tax dollars are going to fund official time.

Second, required reporting of official time will allow federal employees to hold their agencies accountable. As OPM rightly notes, "Annual reporting on official time was initiated by OPM to reinforce accountability on the part of both labor and management."

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<sup>18</sup> OPM FY 2009 report p. 1

<sup>19</sup> American Federation of Government Employees 2010 LM-2 available on [www.unionreports.gov](http://www.unionreports.gov)

<sup>20</sup> National Treasury Employees Union 2010 LM-2 available on [www.unionreport.gov](http://www.unionreport.gov)

<sup>21</sup> National Federation of Federal Employees 2010 LM-2 available on [www.unionreports.gov](http://www.unionreports.gov)

<sup>22</sup> OPM FY 2009 report p 1,2

Congress should also specify the time and manner of the official time report's publication. OPM published the FY 2009 report over two years after the FY 2008 report. The agency blamed the delay on the implementation of its new Enterprise Human Resources Integration (EHRI) system.

However, as noted earlier, OPM did not issue its "call and guidance for reporting of Fiscal Year (FY) 2009 time data" memorandum until October 26, 2010,<sup>23</sup> about a year after the fiscal year ended on September 30, 2009. We understand the implementation of the new system could have caused a delay, but the late request for data greatly exacerbated it.

The lack of clear guidelines may have also contributed to OPM's failure to respond to public requests. CEI repeatedly requested the FY 2009 report, starting in December 2010—nine months after the year anniversary of the previous report and 14 months after the close of the 2009 fiscal year.

OPM did not respond to several requests, and when it did it gave ever-changing deadlines. Each month, OPM assured CEI that the report would be finished the next month. When the deadlines passed, OPM then said the report would be finished another month in the future. At no time did the agency give details on EHRI delays or the delayed call for data.

Official time is a bad deal for taxpayers. Congress should repeal its usage and end the public's subsidy of government union activity.

Short of that, it should legislate to require OPM to report official time usage on an annual basis. Further, Congress should provide OPM with specific deadlines for publishing the report and guidance on its format to ease public understanding of the issue. Congress should also require that the report be made available on a timely basis to the public prominently on OPM's website.

I would like to thank the subcommittee for this opportunity and will welcome any questions.

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<sup>23</sup> *Id*

## **F. Vincent Vernuccio**

### **Biographical Data**

F. Vincent Vernuccio is Labor Policy Counsel at the Competitive Enterprise Institute. He is an attorney and labor consultant.

Vernuccio previously served as an official in the United States Department of Labor, where he was Special Assistant to the Assistant Secretary for Administration and Management under President George W. Bush.

His opinion essays have appeared in *National Review*, *Forbes*, *The Washington Times*, FoxNews.com, The Daily Caller, and *Investor's Business Daily*.

He has had several research papers published by CEI and other think tanks such as the Capital Research Center. His work also appears in the McGraw-Hill textbook *Taking Sides: Clashing Views in Management*, where he was called a "labor scholar and expert."

Vernuccio is frequently asked to appear on the *Fox News Channel* and *Fox Business Network*.

He is the creator and editor of CEI's labor news website [WorkplaceChoice.org](http://WorkplaceChoice.org).

### **Legal/ Policy Experience**

**Competitive Enterprise Institute**, Washington, D.C.  
Labor Policy Counsel, May 2010 – Present

**Labor Consultant**, Washington, D.C.  
February 2009 – Present

**United States Department of Labor Office of the Assistant Secretary for Administration and Management**, Washington, DC  
*Special Assistant to the Assistant Secretary*, January 2008 – January 2009

**Lexis Nexis**, Ann Arbor, Michigan  
*Lexis Associate*, February 2005 – July 2007

### **Education**

**Ave Maria School of Law**, Ann Arbor, Michigan  
*Juris Doctor*, May 2007  
Admitted to: Michigan Bar, November 2007; Washington DC Bar, March 2010

**State University of New York College at Oneonta**, Oneonta, New York  
*Bachelor of Arts*, Political Science, August 2003

### **Articles, Opinion Editorials, and Letters to the Editor**

1. May 4 – With William Kovacs, “Under Obama, Running out of Money is a success,” BigGovernment.com
2. April 25 – “Obama’s \$5 Billion Giveaway,” National Review Online
3. April 11 – “A Tale of Two Bridges,” The American Spectator
4. April 8 – “Obama Administration Covers Up Union Welfare Program,” The Washington Times
5. April 6 – “Wisconsin Supreme Court, A Referendum that Wasn’t,” BigGovernment.com
6. April 6 – “Solis’ Pro-Union Bias” American Conservative Union Newsletter
7. March 21 – With Iain Murray, “UAW’s Last Gamble,” National Review pp. 33-34
8. March 19 – “GOP Lawmakers seek Labor Reform in Michigan,” The Daily Caller
9. March 8 – with William Kovacs, “The Truth About Wisconsin,” The American Spectator
10. March 1 – “Labor Secretary Admits Union Bias” BigGovernment.com
11. February 20 – “Unions bucking the will of the people” The Post – Journal Sentinel
12. February 18 – With Iain Murray, “Fixed Labor Game is Ending in Wisconsin,” The Washington Times
13. January 21 – with Ivan Osorio, “The UAW doesn’t care what you think,” The Washington Times
14. January 21 – “Critics say NLRB pursuing card check outside of legislative process,” The Daily Caller
15. January 6 – “Vernuccio: Government Unions Dump on Public,” The Washington Times

### **2010**

16. December 20 – With Iain Murray; “The Enemy Within” National Review pp. 42-45
17. December 2 – “Federal workers still receive pay raises despite freeze” Daily Caller; Fox News; Yahoo News
18. November 17 – “Union Members: Where Do Your Dues Go?” BigGovernment.com
19. November 15 – “Bill Would End Right to Work in All States,” Heartland Institute; Budget and Tax News
20. November 5 – With Ivan Osorio, “Big Labor May Still Reap Benefits Despite Election Losses,” Forbes.com
21. October 19 – “Would You like a Union with that Comrade?” The American Spectator
22. September 29 – “United Auto Workers Local Costs 650 Jobs in Indiana,” Townhall
23. September 14 – With Ivan Osorio, “California’s Union Civil War,” The American Spectator
24. September 14 – “The War between SEIU and NUHW: What it Tells Us about Card Check,” BigGovernment.com
25. August 31 – “Unions Hire non union Picketers,” BigGovernment.com
26. August 18 – With Ivan Osorio, “Dems Giving Support to Yet Another Union Bailout,” Townhall
27. August 10 – “Bailing Out Teachers,” The American Spectator

28. August 1 – “Department of Labor Inspector General Nominee; Too Political Too Controversial,” BigGovernment.com
29. July 16 – “Michigan a Right to Work State?” The American Spectator
30. July 7 – “Will 2010 be the Year States Say Enough is Enough?” The Daily Caller
31. June 17 – With Ivan Osorio, “The New King of Detroit,” BigGovernment.com
32. May 26 – With Jeremy Lott, “Look for the union fable; Taxpayers could be on the hook for pension bailouts,” The Washington Times
33. April 30 – “Seeing Red,” The American Spectator
34. April 23 – “Andy Stern’s debts – SEIU leader swims away while his organization sinks,” The Washington Times
35. March 26 – “Times vs. Times the Truth on Union corporate Influence,” BigGovernment.com
36. March 12 – With Bruce McElvein, “Big Labor’s Big Disappointment,” BigGovernment.com

### **Studies Published**

1. November 1 – “The 2010 Union Pension Bailout Bills,” Capital Research Center
2. June 1 – “Al Gore’s Crony Capitalist Crusade,” Capital Research Center

### **Television Appearances**

1. May 20 – “Bulls and Bears,” Fox Business; Washington DC
2. April 22 – “Your World with Neil Cavuto” Fox Business; Washington DC
3. January 17 – “Varney and Company,” Fox Business; Washington DC
- 4.

### **2010**

5. December 30 – “Varney and Company,” Fox Business; Washington DC
6. December 20 – “Varney and Company,” Fox Business; Washington DC
7. December 5 – “Fox and Friends,” Fox News Channel; Washington DC
8. December 3 – “Varney and Company,” Fox Business; Washington DC
9. November 26 – “Varney and Company,” Fox Business; Washington DC
10. November 18 – “Varney and Company,” Fox Business; Washington DC
11. November 17 – “Follow the Money,” Fox Business; Washington DC
12. November 08 – “Varney and Company,” Fox Business; Washington DC
13. October 14 – “Varney and Company,” Fox Business; Washington DC
14. October 1 – “Varney and Company,” Fox Business; Washington DC
15. September 6 – “Fox and Friends,” Fox News Channel; Washington DC
16. September 2 – “Varney and Company,” Fox Business; Washington DC
17. August 19 – “Cost of Government Day,” C-SPAN; Washington DC
18. August 18 – “Willis Report,” Fox Business; Washington DC
19. August 17 – “Varney and Company,” Fox Business; Washington DC
20. July 30 – “Funding of State Pension Plans,” C-SPAN; Washington DC
21. July 19 – “Varney and Company,” Fox Business; Washington DC

Committee on Oversight and Government Reform  
Witness Disclosure Requirement - "Truth in Testimony"  
Required by House Rule XI, Clause 2(g)(5)

Name: F. Vincent Vernuccio

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

I was employed by the U.S. Department of Labor from Jan 22, 2008 - Jan 20, 2009. I started as a GS-1151 and ended as a GS-1152. I have no other federal grants or contracts.

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Competitive Enterprise Institute (CEI)

I am their Labor Policy Counsel and am the project leader for their Labor Policy Project

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

CEI has had no federal grants or contracts since October 1, 2008



5-27-11

I certify that the above information is true and correct.  
Signature:

Date: