



# Foundation Action

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of the National Right to Work  
Legal Defense Foundation, Inc.

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## Case to End Public Sector Forced Dues Heads to U.S. Supreme Court

*A victory would give all government employees in America Right to Work protections*

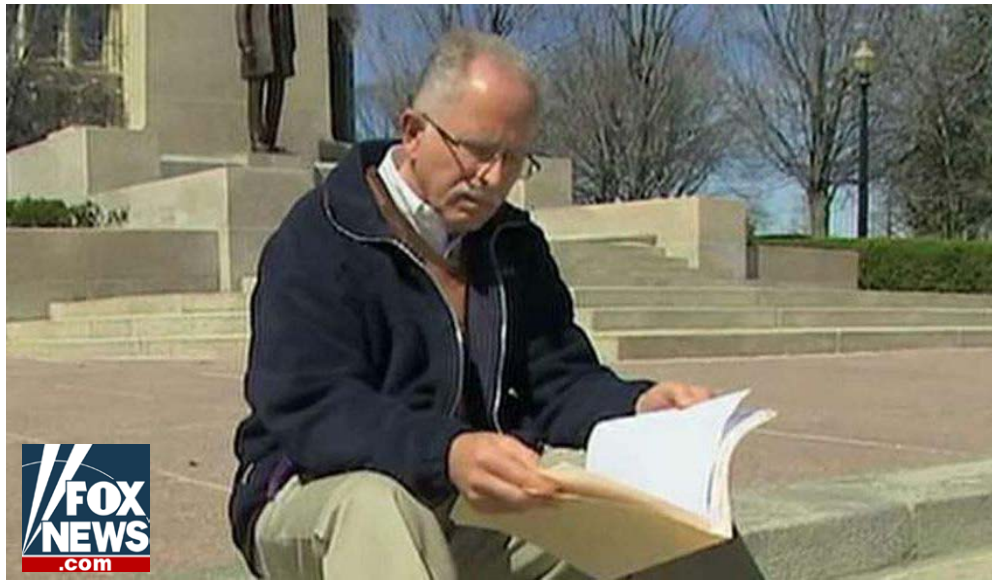
WASHINGTON, D.C. – By this time next year every government worker in America could be free from forced union dues if a National Right to Work Legal Defense Foundation lawsuit for an Illinois state employee is successful. Mark Janus, a state-employed child support specialist, seeks a ruling that forcing government employees to pay money to union officials to keep their jobs violates the First Amendment.

In June, staff attorneys from the National Right to Work Foundation and Liberty Justice Center filed a writ of certiorari petition with the United States Supreme Court, asking the Court to hear *Janus v. AFSCME*. If the Court agrees in September to take the case, a ruling would be likely by June 2018.

“Requiring public servants to subsidize union officials’ speech is incompatible with the First Amendment. This petition asks the Supreme Court to take up this case and revisit a nearly half-century-old mistake that led to an anomaly in First Amendment jurisprudence,” National Right to Work Foundation President Mark Mix commented.

### Foundation Intervenes to Challenge Forced Dues

The *Janus v. AFSCME* case stems from an executive order issued by Illinois Governor Bruce Rauner on February 9, 2015. It prohibited state agencies from requiring nonmember state employees to pay union fees, and directed that such fees deducted be put in escrow pending



**Mark Janus, employed by the Illinois Department of Healthcare and Family Services, said that he filed this case “on behalf of all government employees who want to serve their community without having to pay a union first.”**

the resolution of litigation. On the same day, Rauner filed a federal lawsuit in the U.S. District Court for the Northern District of Illinois asking for a declaratory judgment that the forced fee provisions violate the First Amendment and that his executive order was valid.

In March 2015, staff attorneys from the Foundation and the Liberty Justice Center moved for Mark Janus to intervene in the case. Janus’ complaint requested not only a declaratory judgment but also an injunction and damages from the unions for the compelled fees. The court granted Janus’ motion to intervene which allowed the suit to continue to move forward even after the court ruled that Governor Rauner lacked the standing to

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# Unwanted USW Union Finally Ousted a Year After Workers Voted them Out

*Union officials' stalling tactics permitted them to collect forced dues for years*

PITTSBURGH, PA – After a year-long battle, the workers at a Unifirst Corp. facility in Pittsburgh have finally ejected an unwanted union from their workplace. The workers were assisted by National Right to Work Legal Defense Foundation staff attorneys.

Homer Suman is a worker at a Unifirst Corp. laundry in north Pittsburgh, PA. Suman and the other workers at the laundry were forced into a monopoly bargaining contract with the United Steelworkers Union (USW). On April 28, 2016, the workers participated in a decertification election conducted by the National Labor Relations Board (NLRB), with the workers overwhelmingly rejecting the USW's representation.

However, the USW union officials refused to accept the decertification election's clear outcome, and filed a number of frivolous objections with the NLRB, seeking to preserve their forced-unionism powers over the workers. Because Pennsylvania is not a Right to Work state, workers can be forced to pay union



***NRTWF staff attorneys fought for a year to enforce workers' vote to remove the USW from their workplace.***

dues or fees to union officials as a condition of employment.

Assisted by National Right to Work Foundation staff attorneys, Suman has fought the USW officials' objections for several years. During this time, all Unifirst Corp. workers under the USW monopoly bargaining contract were forced to continue paying dues and fees to the USW despite the results of the 2016 de-

certification election.

Suman and other Unifirst employees filed and won a prior decertification election in 2014, only to have that victory snatched away by a divided NLRB made up of Obama appointees. USW officials filed objections to that election, and the NLRB accepted the union boss arguments and continued to force these workers to pay dues to the USW.

## Case Highlights Big Labor Tactics to Block Workers' Decertification Votes

According to Suman, the vast majority of these workers never had the chance to vote on union representation, but were hired after the USW was installed in the facility over 15 years ago. And despite the workers repeatedly rejecting the union, these union bosses fought for nearly 4 years to continue seizing dues and fees from these workers.

In early May 2017, over a year after the landslide vote, the NLRB overruled the objections filed by USW officials and certified the results of the decertification election. This ruling vindicates Suman's fight, and removes the USW from his workplace, finally freeing him and his coworkers from unwanted union monopoly "representation" and forced dues.

"It is outrageous that the NLRB allowed USW officials to play games with the system and drag these proceedings out for years," said Mark Mix, President of the National Right to Work Foundation. "These workers had already spent years fighting to be free of compulsory unionism, and the NLRB delays forced these workers to remain in an unwanted contract and pay dues and fees for a year. This case shows why Pennsylvania needs a Right to Work law to protect the right of workers to choose whether or not to support a union." 🙏

## Foundation Action

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The Foundation is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by abuses of compulsory unionism. All contributions to the Foundation are tax deductible under Section 501(c)(3) of the Internal Revenue Code.

## Care Providers Ask High Court to Hear Forced ‘Representation’ Challenge

*Providers’ petition argues that union monopoly bargaining and forced ‘representation’ violates the First Amendment’s protections of the freedom of association*

WASHINGTON, D.C – In early June, staff attorneys for the National Right to Work Legal Defense Foundation and Liberty Justice Center petitioned the U.S. Supreme Court to hear *Hill v. SEIU*. The case seeks to strike down a compulsory unionism scheme that grants Service Employees International Union (SEIU) officials exclusive monopoly “bargaining” powers with Illinois state government for thousands of Illinois caregivers – including many who never joined the union and oppose the union’s so-called ‘representation.’

In the petition to the Court for six Illinois personal-care and childcare providers, Foundation staff attorneys contend that the state law infringes on the providers’ First Amendment rights by forcing them to associate with a union they do not wish to join or support. Granting the union exclusive power to deal with the State of Illinois over caregiving practices violates the caregivers’ right to choose with whom they associate to petition their own government.

The caregivers’ petition to the Supreme Court in *Hill* follows the National Right to Work Foundation’s landmark 2014 Supreme Court victory in *Harris v. Quinn*, which was also filed for several home-based Illinois care providers. That decision prohibited union officials from collecting mandatory dues or fees from home-based caregivers.

### Case Seeks to Expand Harris Victory

The *Hill* petition argues that, although the *Harris* case dealt with compelled fees, because the Court ruled that the state’s justification for mandatory fees was insufficient under the First Amendment, the Supreme Court should strike down the compelled association on the same grounds.




**Susie Watts, pictured here with her daughter Libby, was one of the plaintiffs in *Harris v. Quinn*. Harris ended the SEIU forced-dues scheme in Illinois, but left Watts and thousands more subject to unwanted SEIU forced-representation.**

The petition asks the Court to take the case so that it can apply the same standard to the First Amendment infringements created when state law forces home care providers to accept a government-appointed monopoly union agent against their will. Foundation staff attorneys have brought similar challenges on behalf of home and childcare providers in Massachusetts, Minnesota, New York, Oregon, and Washington State.

“It is outrageous that across the country state laws force home and childcare providers to accept unwanted ‘representation’ from a union they have no interest in joining or supporting,” commented Foundation Vice President Patrick Semmens. “This is a clear violation of providers’ freedom of association. We are hopeful that this case will build on the Foundation’s landmark 2014 victory in *Harris v. Quinn* and end these corrupt forced-unionism schemes for good.”

Like the other Foundation case petitioned to the Court on the same day, *Janus v. AFSCME*, *Hill v. SEIU* is on track

for the Supreme Court to decide whether to hear it at its conference before the next term begins in the fall.

If four justices agree, the Supreme Court could announce soon after its September 25 conference that it will hear the case. The petition also argues that if the Court doesn’t take the *Hill* case right away, it should at least hold it pending a decision in the *Janus* case. 

### Extra! Extra! Newsclips Requested!

Send articles exposing abusive union practices from your local paper to:  
NRTWLDF

ATTN: Newsclip Appeal  
8001 Braddock Road, Ste. 600  
Springfield, VA 22160

Supporters can also email stories to:  
[info@NRTW.org](mailto:info@NRTW.org)

Featured Foundation Commentary

# The Washington Times

## Ending the Obama Labor Board Majority

By Mark Mix

Elections have consequences, or at least they are supposed to. Unfortunately for the rights of independent workers who don't want to associate with a labor union, more than 100 days have passed since Barack Obama left office, but the National Labor Relations Board (NLRB) remains in the hands of an Obama majority intent on pushing the limits of Big Labor's forced unionism powers. It doesn't need to be that way.

The five-seat NLRB, with two vacancies, remains controlled by a two-to-one Obama majority. Until two new members are nominated by President Trump and confirmed by the Senate, the Big Labor majority will continue to issue rulings to expand union boss powers.

As more and more workers are protected by the now 28-state Right to Work laws, which prohibit forced dues and fees, union bosses desperate for new sources of forced-dues cash have concocted new and outrageous schemes — aided and abetted by the Obama NLRB.

Take one recent example. Last month, citing an earlier decision by Mr. Obama's NLRB classifying graduate students as employees for the purposes of unionization, a regional director of the federal agency opened the door to undergraduate students being forced under Big Labor's thumb — even if the “compensation” they receive consists mostly of free room and board for serving as resident assistants in college dorms.

As one federal judge explained, under Mr. Obama's appointees, the NLRB has shifted “from its investigatory function and enforcer of labor law, to serving as the litigation arm of the Union, and a co-participant in the ongoing organization effort of the Union.”

Stacked with forced-dues militants, Mr. Obama's NLRB has consistently done everything in its power — and frequently far more than it is legally authorized to do — to grease the skids in favor of forced unionization.

For instance, unable to convince workers to join unions voluntarily, union organizers increasingly rely on “card check” organizing drives to intimidate, trick or cajole workers into forced-dues-paying ranks without secret-ballot votes. Thanks to the Obama NLRB, these drives are more dangerous than ever.

Mr. Obama's appointees overturned the Dana Corp. decision, won by National Right to Work Foundation staff attorneys, that secured for workers a limited right to challenge the results of a “card check” campaign with a secret-ballot election.

Later, the NLRB instituted new rules for unionization elections that allow union organizers to ambush workers with quick-snap elections, denying them sufficient time to educate themselves about the pros and cons of unionization. Adding insult to injury, these rules force employers to hand over to union organizers the personal contact information of every employee, and union officials can withdraw their petition for an election and retain that information to launch a full-scale “card check” campaign at a later date.

In other power grabs, the Obama NLRB gutted a Supreme Court decision prohibiting union bosses from forcing workers to pay for lobbying and political expenses; enabled union bosses to target and organize “micro” units of workers even when they know most workers in a workplace oppose unionization; and ignored 60 years of precedent by forcing companies to continue automatic dues collection even after monopoly bargaining agreements expire.

And the hits against employee freedom will surely keep coming until the two vacancies on the board are filled.

Mr. Trump, who pledged to support the Right to Work principle in his campaign, can return the board to being a neutral arbiter of labor law. Following former Senate Majority Leader Harry Reid's move to gut the filibuster on nominations

in 2013, Big Labor's politicians in the Senate are unlikely to block Mr. Trump's nominees.

There are already a number of cases in the NLRB's pipeline that could serve as vehicles to overturn many of the Obama NLRB's most biased decisions. In fact, National Right to Work Foundation staff attorneys at any given time have more than 60 cases at the NLRB providing free legal aid to workers victimized by compulsory unionism abuses.

Other Obama NLRB actions can be overturned administratively. For instance, a new board could repeal the ambush elections rules and end the Obama board's practice of needlessly delaying decertification elections that allow workers to remove unwanted unions.

Barack Obama's NLRB has reshaped American labor law to expand forced-unionism power over rank-and-file workers. Until President Trump acts and the Senate confirms his nominees, the fox is actually inside the henhouse at the NLRB.



*This op-ed originally printed on page B1 of the May 25, 2017 Washington Times*

## NLRB Officials Stonewall Unanimous Worker Petition to Remove Union

*Case shows Obama NLRB's bias against workers who don't want to associate with Big Labor*



**Every single unionized employee at Lakeside Foods signed the NLRB petition to remove the UFCW, but NLRB officials forced them to remain in the union.**

WINNETKA, IL – National Right to Work Legal Defense Foundation staff attorneys are currently assisting a Chicago area worker with her request for the National Labor Relations Board (NLRB) to review a case in which she and her co-workers were denied the right to decertify a union claiming to represent them, despite the fact that every employee in the bargaining unit signed a petition to end union representation.

The worker, Maureen Madden, is employed at Lakeside Foods. On March 2, 2017, she filed a petition to decertify the United Food and Commercial Workers Local 1456 (UFCW). Under the National Labor Relations Act (NLRA), if a decertification petition garners signatures from 30% or more of the employees in a bargaining unit, the NLRB will conduct a secret-ballot election to determine whether a majority of the employees wish to decertify the union. Every single employee in Madden's bargaining unit signed the petition in support of removing the union.

Even though the decertification petition had one-hundred percent employee support, the NLRB Regional Director

refused to honor it, citing the so-called "successor bar." The "successor bar" stems from a 2011 NLRB decision and strips away the rights of employees to decertify a union if new ownership takes over the place of employment despite the fact that nothing about the union's unwanted "representation" has changed.

### Case Demonstrates NLRB Forced-Unionism Bias

A "successor bar" does not appear anywhere in the NLRA, and the Act's stated purpose is to give employees a choice in their representative, including declining union representation. Yet the NLRB Regional Director used this regulatory creation as the justification to keep employees under union control for up to three additional years. Furthermore, because Madden and her coworkers work in Illinois, a state that does not provide Right to Work protections, the NLRB Regional Director's decision allows UFCW to continue collecting forced fees from the employees as a condition of employment.


Shortly after filing the petition with the NLRB, Madden talked with Illinois

News Network's Greg Bishop about the case. "Not to be heard by someone who's supposed to represent you? That's absurd," Madden said. "And to have to pay for them on top of that. Every single employee on the grocery side would like to just be rid of them. They are intimidating people. They will lie to get what they want, in my opinion."

Madden's request for the NLRB's review, filed in April, points out that so-called "successor bars" conflict with decisions of the Sixth and Seventh Circuits and the U.S. Supreme Court, all of which hold that a union's presumption of majority support can be overcome by proof that a majority of employees do not support the union despite new ownership, as has happened in this case.

The NLRB's dismissal in this case is another example of bureaucratic overreach by the Obama NLRB that tilted the scales in favor of union bosses over the rights of independent-minded workers like Maureen. From stripping away protections against onerous "card-check" organizing drives, to rigging election rules to make it easier for union organizers to put workers under union monopoly control, to bringing forced unionization to new economic sectors and types of workers, the Obama NLRB has done great damage to worker freedom that could take years to undo.

"It is absolutely outrageous that this NLRB Regional Director dismissed a petition filed by a worker with every single one of her coworkers supporting it," said Ray LaJeunesse, Vice President and Legal Director of the Foundation.

"Far from being a neutral arbitrator as the NLRB claims to be, the Regional Director is allowing UFCW to continue to collect forced fees from workers although one-hundred percent object to the union and its so called 'representation.' This case highlights why Illinois workers need the protections that Right to Work provides." 

## Consider a Gift of Securities Today!

With the stock market hitting record highs, an increasing number of National Right to Work supporters have found it advantageous to further the cause of worker freedom while reducing their tax burden and increasing income.

Your gift of appreciated publicly traded securities to the National Right to Work Foundation today will help assist workers victimized by the abuses of compulsory unionism.

If these securities are held for longer than a year, generally they are deductible at their full market value – not just their original cost basis – and capital gains tax is not owed because a gift is not considered a “sale” that would otherwise result in the taxation of the gain.

Taxpayers who itemize enjoy these tax savings when deducting the full value of the donated security against their regular income. You can use securities to fund a charitable remainder trust or a charitable gift annuity. If you fund a charitable gift annuity with appreciated securities, capital gains are recognized over a period of years rather than all in the year of the gift.



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Receiving Bank: Merrill Lynch  
Account Number: 86Q-04155  
**\*\*\*DTC Number: 8862\*\*\***

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Today is the day to contact your financial advisor and make a charitable gift of stock to the National Right to Work Foundation. For the charitably engaged individual, a gift to the Foundation will reap rewards well into the future in helping to stop compulsory unionism in our country.

As in all planned gifts, please contact your financial advisor or tax attorney to be sure to receive the maximum tax benefit with your gift to a charitable organization.

If you decide to make a gift of stock, please contact Ginny Smith at 1-800-336-3600. Thank you for your generosity.

## Media Covers *Janus v. AFSCME* Supreme Court Petition

On June 6, 2017, staff attorneys from the National Right to Work Legal Defense Foundation filed a petition for certiorari in the case *Janus v. AFSCME*. Simultaneously, the Foundation's Legal Information department conducted a massive media information campaign to raise awareness about the case and the implications that it has for worker freedom and liberty nationwide.

These media hits are just a sample of the more than two hundred news stories that the information campaign triggered about the filing.

Associated Press  
New York Times Online  
Bloomberg News  
The Washington Post  
The Houston Chronicle  
The Washington Free Beacon  
The Washington Times  
Indianapolis Business Journal  
FoxBusiness.com  
FoxNews.com  
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Law360  
Live 5 News Charleston  
Modesto Bee  
Sacramento Bee  
The Olympian  
The Fort Worth Star Telegram

## Illinois Worker Petitions High Court to Defend First Amendment Rights

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pursue the lawsuit.

On July 2, 2015, the Illinois Attorney General asked the district court to stay the case pending the Supreme Court's decision in a case with similar constitutional issues at stake, *Friedrichs v. California Teachers Association*.

The Supreme Court ultimately deadlocked 4-4 on *Friedrichs*, following Justice Scalia's death, allowing the 1977 *Abood v. Detroit Board of Education* precedent to stand for the time being. In *Abood*, the Court held that, although union officials could not constitutionally spend objectors' funds for some political and ideological activities, unions could require fees to subsidize collective bargaining and contract administration with government employers.

Soon after the deadlock in *Friedrichs*, a district court judge dismissed *Janus*, allowing the case to be appealed to the Seventh Circuit. The Seventh Circuit affirmed dismissal, citing *Abood*, thus allowing *Janus* to be petitioned to the Supreme Court.

### Recent Foundation Supreme Court victories set stage for *Janus* case

*Janus* follows a series of Foundation-won Supreme Court decisions that demonstrate a willingness by the Supreme Court to reconsider *Abood* and apply strict scrutiny to the constitutionality of forced union fees.

In *Knox v. SEIU*, brought by Founda-



**U.S. Supreme Court could grant certiorari in *Janus v. AFSCME* in September 2017, which would set up a ruling by June 2018.**

tion staff attorneys for California employees, the Supreme Court began to question *Abood's* underpinnings. The Court in 2012 held in *Knox* that union officials must obtain affirmative consent from workers before using workers' forced union fees for special assessments or dues increases that include union politicking.

The opinion Justice Samuel Alito authored left the door open to challenge all forced union fees as a violation of the First Amendment. Alito wrote that previous Supreme Court rulings allowing forced fees "have substantially impinged upon the First Amendment rights of nonmembers."

The Foundation also assisted a group of Illinois home care providers in challenging a state scheme authorizing Service Employees International Union officials to require the providers to pay union dues or fees. Foundation attorneys took the case, *Harris v. Quinn*, to the Supreme Court, which held in 2014 that the forced-dues requirement violated the First Amendment.

In the Court's opinion in *Harris*, Justice Alito expanded his criticism of forced union fees writing, "Except per-

haps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support."

*Janus v. AFSCME* is on track for the Supreme Court to decide whether to hear it at its conference before the next term begins in the fall. If four justices agree, the Court could announce soon after its September 25 conference whether it will hear the case.

### Similar Federal Lawsuit Filed in Minnesota

Foundation staff attorneys also filed another federal lawsuit seeking to end union bosses' forced-dues powers to demand union fees as a condition of employment. The case, *Keller v. Shorba*, was filed for two Minnesota state employees. These employees, Carrie Keller and Elizabeth Zeien, are employed by the State of Minnesota Court System. When they started working for the State, neither was a union member, and they both negotiated their own terms and conditions of employment and salaries, free from union interference.

In 2015, union officials started pro-

See *Forced Dues Challenged* page 8



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## Forced Dues Challenged


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ceedings to force state employees who were not in monopoly bargaining units into union ranks, where they could be required to pay union dues and fees. In March 2017, Minnesota state officials bowed to the Teamsters' demands and added a number of employees, including Keller and Zeien, to a Teamsters-controlled bargaining unit without the employees' permission or desire. Keller, Zeien, and the other employees were never given a vote on whether they should be part of the union bargaining unit, and they objected to the new scheme.

## Union "Deal" Lowers Pay

Before being forced under the union contract, Keller and Zeien had negotiated pay scales and benefits for themselves that equaled or exceeded what they are forced to accept under the union-mandated contract. The lower compensation under the union contract and the imposition of mandatory union fees led Keller and Zeien to approach the Foundation for assistance in challenging the forced unionization scheme.

"These two workers were happily working and successfully representing themselves in dealing with their employer until Teamsters officials sought to bolster their forced-dues ranks even though it meant a step back in Keller and Zeien's working conditions," said Ray LaJeunesse, Vice President and Legal Director of the National Right to Work Foundation. "This case is a prime example of why it is wrong to force employees to pay money to a union for representation they don't want, never asked for, and frequently would be better off without."

Keller and Zeien's case is one of six ongoing challenges, in addition to *Janus*, brought by Foundation staff attorneys across the country challenging the constitutionality of forced union fees. 



## Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter,

The fight to end forced unionism marches full speed ahead.

Since its inception in 1968, the National Right to Work Foundation has battled to end Big Labor's special legal privileges and free workers from the shackles of compulsory unionism.

In two recent Foundation-won victories, *Knox v. SEIU* (2012) and *Harris v. Quinn* (2014), the Supreme Court appeared skeptical about the constitutionality of forced-union dues or fees. Those wins provide an opening to a victory the Foundation has been seeking since its founding nearly 50 years ago.

Now Foundation staff attorneys have asked the High Court to hear *Janus v. AFSCME*, a case that could free millions of Americans from mandatory payments to union bosses. The Court is set to decide whether to take the case this fall and, if taken, a ruling is expected by the end of June 2018.

If the Justices agree with the Foundation, every government employee – teachers, police officers, firefighters and countless others – will be protected by the First Amendment from being forced to fund a union they don't support. In other words, the Right to Work would be constitutionally protected for over ten million Americans.

This case shows what just one worker, assisted with free legal aid from the Foundation, can do.

Your generous continued support allows the Foundation to pursue ground-breaking strategic litigation like the *Janus* case. Thank you.

Let's continue to march forward to end forced unionism together.

Onward,