



# Foundation Action

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

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## Foundation Cases Poised to Challenge Forced Dues at Supreme Court

*Cases to overturn forced dues could quickly reach full Supreme Court with new Justice*

WASHINGTON, D.C. – Foundation staff attorneys have been busy litigating hundreds of cases for independent-minded workers across the country. Two of those cases have the potential to reach the Supreme Court this year and answer the unresolved questions left in the wake of the 4-4 split in the case *Friedrichs v. California Teachers Association*.

One of those cases, *Janus v. AFSCME*, stems from an executive order of Illinois Governor Bruce Rauner’s that sought to place union fees that nonunion members are forced to pay into an escrow account until the constitutionality of those fees is resolved. Governor Rauner simultaneously filed a lawsuit in U.S. District Court for the Northern District of Illinois contending that collecting forced dues or fees from state employees as a condition of employment violates the First Amendment of the Constitution.

### Foundation Saves Forced Dues Legal Challenge

Foundation staff attorneys then filed a motion to intervene as plaintiffs for Mark Janus and other state employees who are forced to pay union fees as a condition of employment. A judge eventually ruled that Governor Rauner did not have standing in court but let the Foundation-represented employees continue to challenge the constitutionality of forced fees.

After the Supreme Court reached a 4-4 deadlock last year in a similar case,



**The Supreme Court Justice selected to fill the vacancy left by the death of Justice Scalia could be the decisive vote on constitutional challenges to union forced-dues powers.**

*Friedrichs v. CTA*, the district court judge ruled against Janus and the other state employees. Foundation attorneys immediately filed an appeal to the Seventh Circuit Court of Appeals and are awaiting a decision. It is possible that a petition for a writ of *certiorari* could be filed with the Supreme Court later this year.

The second case is *Serna v. Transportation Workers Union (TWU)*, a class-action lawsuit brought by several employees of American Eagle Airlines and Southwest Airlines in the U.S. District Court for the Northern District of Texas. A petition for *certiorari* was pending with the Supreme Court as this is-

*See Trump Supreme Court page 7*

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## Foundation Expands Legal Rights Outreach to Charter School Teachers

### *Charter school employees increasingly are targeted by Big Labor for forced unionization*

SPRINGFIELD, VA – The National Right to Work Foundation is stepping up its efforts to inform teachers and other employees of charter schools about the legal rights they have to refrain from compulsory unionism. As part of the effort, Foundation staff attorneys attended charter school conferences in Ohio and Louisiana in December.

Sending Foundation attorneys to these charter school conferences is part of a growing initiative of the Foundation's legal information program to ensure that charter school employees are fully aware of their rights and able to make informed decisions in regard to unionization. In 2016, Foundation staff attorneys attended conferences across the country to promote the Foundation's legal aid program for charter school employees.

Union bosses have historically been steadfastly opposed to the existence of



**Foundation staff attorney Sarah Hartsfield speaking to attendees at a charter school conference.**

charter schools because they see them as a threat to their monopoly over students and teachers. However, as charter schools continue to expand across the country and grow in popularity, teacher union organizers have been increasingly targeting charter school employees as new sources of forced dues to fill their depleting coffers.

### **Charter Teachers Expel Unwanted Union**

Foundation staff attorneys recently assisted charter school employees in New York State in getting an election to decertify a union the employees did not want. Even after a majority voted to decertify the union, union bosses appealed to the National Labor Relations Board (NLRB) in a desperate attempt to keep the employees in their forced-dues grasp. Foundation staff attorneys helped the employees every step of the way and successfully convinced the NLRB to deny the appeal.

“Teachers and students are flocking to charter schools in part because they are largely free of the teacher union monopoly that puts union boss power ahead of what is best for teachers, students and their communities,” National Right to Work Foundation Legal Director Ray LaJeunesse commented. “Sending Foundation staff attorneys to these conferences, in addition to assisting individual employees, is a crucial part of our charter school initiative to ensure that charter school employees are able to make informed decisions about union representation in an atmosphere free from union boss threats, harassment, coercion, or misrepresentation.” 

## Foundation Action

Rev. Fred Fowler	Chairman, Board of Trustees
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Patrick Semmens	Vice President and Editor-in-Chief
Mark Mix	President

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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.

## Postal Union Bosses Forced to Disgorge \$1.1 Million Kept from Workers

*Union officials outrageously claimed legal right to take additional \$7.5 million from rank-and-file*



**APWU union bosses were caught red-handed stealing 1.1 million dollars from an arbitration award intended for workers.**

WASHINGTON, D.C. – In the culmination of a two-year-long fight, U.S. Postal Service workers receiving free legal aid from the National Right to Work Foundation have won their battle with the American Postal Workers Union (APWU), forcing the union's officials to disgorge over one million dollars taken by the union from money intended for the workers.

### Workers File Federal Charges to Challenge Union Boss Money Grab

In December 2014, over seven thousand USPS workers were awarded a lump sum payment of back wages as part of an arbitration award. To the workers this was a deserved victory, but to the officials of the APWU, this was an opportunity to pad union coffers. Steven Raymer, an APWU official involved with the arbitration, colluded with the Postal service to divert into the coffers of the APWU over 1.1 million dollars from the total award of 8.64 million dollars.

In April 2016, two postal workers, Louis Mazurek and Scott Fontaine, became

aware of the diversion and filed separate NLRB charges against the APWU in NLRB Region 5.

In an affidavit filed with the NLRB during the proceedings, union official Raymer went to some length to attempt to justify his decision to divert that sum from the money intended for the very workers he claimed to “represent.”

Raymer even admitted that he had considered taking more of the funds away from the workers. “I had thought briefly about keeping the entire amount...I think I would have been justified in keeping it all...” His testimony showed that his concern was not for the workers the APWU claimed to represent, and that had he thought he could get away with it, he would have taken more money away from the workers.

“This battle just emphasizes the disconnect between the workers and union brass,” said Mark Mix, President of the Foundation. “Sadly, the only reason that these workers saw any money at all was a union boss’ fear of getting caught, not genuine concern and care for the workers.”

As the case proceeded, Fontaine and Mazurek approached the Foundation because they were concerned with what would happen to their case at the NLRB. Foundation staff attorneys then assisted them in preparing for a full hearing before an administrative law judge that was scheduled for early November.

### APWU Officials Forced to Disgorge \$1.1 million in NLRB Settlement

Less than 24 hours before the hearing, the NLRB came to the rescue of the union officials and arranged a settlement in the case, sparing union officials another round of embarrassing testimony about their sellout of the rank-and-file.

Under the settlement, the APWU must disgorge the full 1.1 million dollars that it kept from the workers. Seventy percent is to be paid out directly to workers with each eligible employee to receive a pro rata share of \$770,804.58.

The remaining 30% of the stolen money, \$330,326.70, will be placed in a separate escrow account under the direct supervision of the NLRB Regional Director for the next three years. Any funds remaining at the end of this three year period will be divided evenly among the workers who received payments under the settlement.

“This is a solid victory for employees. Rarely has a union been caught so dramatically taking this large a sum, and then being forced to return the money to its rightful owners as a result of NLRB charges,” said Mix. “The workers are fortunate that they were able to take advantage of the free legal aid offered by the Foundation, else they might not have seen any of this money ever again.”

## Assist the Foundation with a Stock Gift or IRA Distribution Today!



While cash gifts continue to be the most popular way to support the Foundations' mission of curbing the abuses of compulsory unionism, gifts of stocks or other securities can be just as valuable to the Foundation while providing a benefit to you as a donor, thanks to incentives present in our tax system.

### *Giving appreciated stocks can provide tax savings*

Many securities you own today may be worth much more than what you originally paid for them. These appreciated assets (which you have held for more than one year) can be a very attractive charitable gift to the Foundation, as contributions of stocks, bonds and other securities are fully tax deductible.

You may be surprised to learn that the deduction is for the *current fair market value* of the securities you donate, if they have been held by you over a full year. The deductible amount for income taxes includes both what you paid for the stock at the time of purchase and your capital gain at the time you donate the stock!

In other words, you can use the amount of the "paper profit" as a tax deduction even though it is never taxed or reported as income. The net savings of giving a gift of stock can be very attractive to you and your tax filing.

#### Instructions for a gift of Stock or Securities:

Beneficiary: National Right to Work Legal Defense  
Foundation, Inc.  
8001 Braddock Road, Suite 600,  
Springfield, VA 22151

Receiving Bank: Merrill Lynch  
Account Number: 86Q-04155  
DTC Number: 5198

### *Consider an IRA Gift Today!*

In addition to a gift of stock, please consider a tax-free IRA gift today! If you are age 70 ½ or older, you may instruct your IRA custodian to transfer any amount, up to \$100,000, directly to the National Right to Work Foundation. This distribution would not be included in your taxable income for 2017.

This distribution would not be included in your taxable income for your next tax filings and could fulfill any required minimum distribution requirements. It would not produce an income tax deduction.

***If you have any questions or need additional information on donating securities or an IRA gift, please contact Ginny Smith at [plannedgiving@nrtw.org](mailto:plannedgiving@nrtw.org) or 1-800-336-3600 today.***

*Donations to the Foundation are fully tax deductible in the same manner as donations to a church or university. As in all legal, tax, and financial matters, please consult your tax advisor or estate attorney before making a decision on a planned gift or stock contribution.*

## Homecare Providers Challenge Forced Unionism Schemes Coast to Coast

*Numerous Foundation cases seek to enforce and build on landmark Harris Supreme Court victory*

WASHINGTON, D.C. – In January 2014, Foundation staff attorneys argued the *Harris v. Quinn* case before the U.S. Supreme Court. The Court later agreed with the attorneys' arguments and struck down the Service Employees International Union's (SEIU) illegal forced-dues scheme in Illinois. The Court's opinion ruled that individuals who receive state subsidies based on their clientele cannot be forced to pay compulsory union fees.

Although the Supreme Court's decision was clear, unsurprisingly union officials have not willingly complied with the precedent. This has impacted the rights of homecare and childcare providers in dozens of states. In order to force unions to comply with the law, a number of cases are being litigated by National Right to Work Foundation staff attorneys for providers across the nation, including in Oregon, Washington, New York and Illinois.

### Pacific Northwest Care Providers Challenge Union Schemes

Working in partnership with the Washington State-based Freedom Foundation, staff attorneys from the National Right to Work Foundation recently filed suit in the federal courts of Oregon and Washington for homecare providers who are being forced to pay dues to the SEIU in defiance of the *Harris* decision.

In these cases, the respective SEIU local officials have refused to honor resignations from the union and have continued illegally deducting full union dues and fees from nonmember workers. The workers have named the union officials as defendants, as well as state officials of Oregon and Washington due to the government seizing money for the union from homecare providers, many of whom are family members voluntarily taking care of sick or disabled relatives.

Among other rights violations, union



**Susan Watts, here with her daughter Libby, was forced by the state of Illinois to pay union dues to the SEIU in order to care for her own disabled daughter.**

bosses have deliberately obfuscated the resignation process in an effort to coerce more dues money out of homecare workers. Workers seeking to leave the union are being told that they can only resign during an arbitrary two week period that union officials seek to hide from the workers as a means of trapping them into paying dues for another year.

In both cases, the providers and their Foundation staff attorneys seek to establish that providers have the right to cut off dues payment to the union at any time.

### New York Childcare Providers Ask Supreme Court to Review Forced Representation

After the *Harris* ruling struck down the Illinois scheme, Foundation attorneys have applied that precedent to many similar cases. One of these cases is working its way through the courts on the opposite side of the country in New York.

In 2007, disgraced former New York Governor Eliot Spitzer signed an execu-

tive order that named the Civil Service Employees Association Union as the monopoly bargaining agent for thousands of childcare providers outside New York City.

Mary Jarvis, a NY home-based childcare provider, with the assistance of Foundation attorneys, is challenging this illegal scheme in NY courts. In early December, Jarvis and her fellow plaintiffs filed a *certiorari* petition asking the U.S. Supreme Court to hear their case. If granted, Foundation staff attorneys would ask the Court to strike down the forced unionism scheme as a violation of providers' First Amendment rights of association.

*See Monopoly Representation page 8*



The **NEW**  
NRTW.ORG

The Foundation recently released a new version of its award-winning website. Visit today!

[www.NRTW.org](http://www.NRTW.org)

## West Virginia Worker Joins Battle to Defend Right to Work Law

*Greenbrier employee files Motion to Intervene to oppose forced unionism*



**Reginald Gibbs, a West Virginia Worker, seeks to intervene in the multi-union lawsuit so he can defend the state's new Right to Work law.**

CHARLESTON, WV – Since its establishment in 1968, one of the most critical missions of the National Right to Work Legal Defense Foundation has been defending state Right to Work laws from Big Labor's never-ending legal attacks. Inevitably, soon after a new Right to Work law is passed, union officials sue with the intent of overturning, or at least delaying, the worker freedom protections offered by Right to Work.

West Virginia, which passed the nation's 26<sup>th</sup> Right to Work law in early 2016, is no exception. Even before the law took full effect, union lawyers for the AFL-CIO and a coalition of other unions initiated a challenge to the law in state court.

### Worker Joins Battle To Defend Right to Work

In early December, Foundation staff attorneys moved to intervene in the case for Reginald Gibbs, asking the circuit court that Gibbs be made a party to the case so he can defend his rights under the Right to Work law. In his motion,

Gibbs adopts the arguments made in two amicus briefs filed by the National Right to Work Foundation, explaining why the court should reject Big Labor's attempt to overturn or delay the law.

Reginald Gibbs is a slot machine technician at the Greenbrier Resort in White Sulphur Springs, West Virginia. As an employee of the Greenbrier, Gibbs is currently under a monopoly bargaining contract that has a union forced-dues clause, requiring him to pay dues or fees to the union or be fired.

The motion to intervene argues that if the law is overturned or blocked by a judicial order, Gibbs would continue to be forced to pay dues and fees despite his objections. Although the State of West Virginia is already defending the law in the case, the motion notes that Gibbs has special interests in defending his Right to Work as an employee protected by the law, which are distinct from the interests of the state, the duty of which is to defend the law's constitutionality.

"Like clockwork, instead of accepting the decades of precedent uphold-

ing Right to Work protections, union officials are once again spending forced dues to attack worker freedom of choice in court," said Ray LaJeunesse, Legal Director for the Foundation. "We're proud to offer assistance to Mr. Gibbs in defending the legal protections he stands to gain from West Virginia's popular new Right to Work law."

Gibbs further argues in his motion that, as a worker currently employed under a compulsory unionism agreement, he will suffer direct harm if the law is overturned. The court will consider the motion at a hearing scheduled for early 2017.

West Virginia is not the only state where Foundation staff attorneys have responded to union boss legal attacks on Right to Work. Foundation staff attorneys have also filed briefs in similar cases in Federal courts in Idaho and Wisconsin, as well as in a Wisconsin state court.

### Right to Work Battles Loom on Horizon for More States

With the possibility of new Right to Work laws in Kentucky, Missouri and New Hampshire in 2017, the Foundation stands ready to defend worker freedom in those states from the outrageous legal arguments of forced-dues-funded union lawyers.

"One of the Foundation's most vital missions is defending worker freedom by enforcing and defending state Right to Work Laws against the inevitable legal attacks by Big Labor operatives," said LaJeunesse. "The Foundation stands ready to defend employee freedom in Kentucky, Missouri, New Hampshire, or any other state that joins the 26 existing Right to Work states in the future." ⚖️

# National Right to Work Foundation In the News

The Foundation's Legal Information Department works tirelessly to promote the Foundation and raise awareness of the work of our staff attorneys. This is a selection of the Foundation's earned media in the months before this issue went to print.

## National Media

Politico Pro, October 5  
 Insidesources.com, October 8  
 Bloomberg Labor, October 23  
 Insidesources.com, October 25  
 SAExpress-News, October 27  
 San Fran. Chronicle, October 27  
 Houston Chronicle, October 27  
 SeattlePI.com, October 27  
 Washington Times, October 27  
 San Francisco Gate, October 27  
 MySanAntonio.com, October 27  
 Chron.com, October 27  
 Watchdog.org, October 27  
 Bloomberg Labor Report, October 28  
 Law360, November 2  
 Law360, November 4  
 Bloomberg Labor Report, November 4  
 Washington Post, November 5  
 Reading Eagle, November 6  
 Wall Street Journal, November 8  
 Washington Examiner, November 15  
 Washington Free Beacon, November 15  
 Morning Shift, November 22  
 San Francisco Chronicle, November 26  
 Watchdog.org, November 29  
 The New Republic, November 30  
 Wall Street Journal, November 30  
 Business Insider, December 1

## Extra! Extra! Newsclips Requested!

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

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

Supporters can also email stories to:  
 info @ NRTW.org

## TV and Radio

Mike Seigel Show, October 7  
 Illinois News Network, October 17  
 Vicki McKenna Show, October 27  
 KSL-TV, October 27  
 KBOI-TV, October 27  
 Lars Larson NW show, November 3  
 The Schilling Show, November 7  
 Les Sinclair Show, November 7  
 Mike Schikman Show, November 7  
 Illinois News Network, November 21  
 Jay Weber Show, November 29  
 Vicki McKenna Show, December 6  
 MetroNews Talkline, December 6  
 Radio America Network, December 9  
 Fox and Friends, December 9

## Regional Newspapers

Cook County Record, October 4  
 The State Journal, October 5  
 Charleston Gazette-Mail, October 6  
 West Virginia Record, October 11  
 Alton Daily News, October 18  
 Western Free Press, October 24  
 Times-News, October 26  
 Idaho Statesman, October 27  
 CT Post, October 27  
 Midland Daily News, October 27  
 Huron Daily Tribune, October 27  
 Beaumont Enterprise, October 27  
 Bristol Herald Courier, October 27  
 Westport News, October 27  
 Idaho Press Tribune, October 27  
 The Republic, October 27  
 Brown County Democrat, October 27  
 Seymour Tribune, October 27  
 Clay Center Dispatch, October 27  
 Idaho Statesman, October 27  
 News-Times, October 27  
 Times Union, October 27  
 The Daily Journal, October 27  
 Opelika Auburn News, October 27  
 Herald Dispatch, October 27  
 Tulsa World, October 27  
 The Olympian, November 3  
 The Centralia Chronicle, November 3  
 Bangor Daily News, November 30  
 Charleston Gazette-Mail, December 2  
 Union Leader, December 12



Mark Mix on Fox and Friends (Fox News Channel), 12/9

## Trump Supreme Court Poised to take up Forced Dues Challenges

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sue of Foundation Action went to press. That suit challenges the constitutionality of the Railway Labor Act's sanction of agreements that require compulsory union fees as a condition of employment.

Although these employees work in the private sector, the Supreme Court has previously ruled that, because the Railway Labor Act (RLA) effectively mandates forced fees for railway and airline workers, it presents the same constitutional issues as were raised for government employees in *Friedrichs*. Therefore, success in *Serna* on the First Amendment claims against forced dues would effectively overturn forced dues for public sector workers too.

After the Fifth Circuit Court of Appeals ruled in *Serna* against the airline employees, citing the *Friedrichs* deadlock, Foundation staff attorneys filed a petition for a writ of *certiorari* with the Supreme Court. The Court is scheduled to consider the petition on January 6, and a decision whether to take the case or not could follow shortly after; or the Justices may decide to hold the case in light of the potential for a 4-4 tie until a ninth Justice is seated.

"Both of these cases have the potential to answer the ultimate question that was left unresolved by *Friedrichs*. That is, whether or not it is constitutional to force workers to pay union bosses tribute to get or keep a job," National Right to

Work Foundation President Mark Mix said.

In addition to *Serna* and *Janus*, National Right to Work Foundation staff attorneys have two additional cases working their way through the courts – one for university professors in Massachusetts and one for school employees in Kentucky – that directly challenge the constitutionality of mandatory union dues. More cases directly challenging the constitutionality of government-mandated forced union dues are expected to be filed by Foundation staff attorneys in 2017. 📌

## Foundation Cases Challenge Monopoly Representation

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Last year the Supreme Court declined to take up the case *D'Agostino v. SEIU* which was based on a similar scheme in Massachusetts. Legal experts believe the Court may have declined as they had just split 4-4 in the *Friedrichs* case, following the passing of Justice Scalia.

Also in December, Foundation attorneys argued a similar case (*Hill v. SEIU*) before the Seventh Circuit Court of Appeals. The lower court in Illinois ruled that the state had the right to impose a monopoly bargaining representative on this class of workers, without any input or vote by the providers. Foundation staff attorneys argue that this arbitrary assignment of a "bargaining representative" to handle interactions between the government and workers is unconstitutional. Under the First Amendment, citizens have the right to petition the government directly for the redress of grievances, and Foundation staff attorneys argue those protections are violated when the government imposes an unwanted representative to speak to the government for care providers.

"Citizens have the power to select their political representation in government, not the other way around," said Patrick Semmens, Vice President of the National Right to Work Foundation. "These schemes, which before *Harris* forced home-based childcare providers, even grandmothers taking care of their grandchildren, into paying forced dues to union bosses are a slap in the face of the fundamental American principles we hold dear." 

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## Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter,

The New Year brings new opportunities for worker freedom.

After another BILLION-dollar, forced-dues-backed electioneering blitz, many feared America was in for four more years with a President determined to continue Barack Obama's unrelenting bureaucratic assault against independent-minded workers.

Instead, voters rejected Big Labor's handpicked candidate, and now your Foundation has a unique window of opportunity to end forced dues and expand Right to Work protections to all workers.

Over the past few years, Foundation attorneys have been preparing and filing many cases that could ultimately reach the Supreme Court. In this issue of *Foundation Action*, you will read about two cases that could reach the High Court this year: *Janus v. AFSCME* and *Serna v. Transportation Workers Union*.

Both cases have the potential for the Court to strike down union bosses' forced-dues privileges and rule that mandatory union dues and fees are incompatible with the First Amendment, as the Court appeared poised to do a year ago, until Justice Scalia's unexpected death.

Now the High Court could revisit the issue soon, with a newly seated ninth Justice. A ruling for the Foundation-aided employees in one of these cases would free millions of workers nationwide from having to pay tribute to union bosses as a condition of employment.

Your support makes possible what once seemed impossible in the fight for worker freedom. Thank you.

Sincerely,

Mark Mix