



Foundation Action

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Foundation Attorney Argues Forced Union Fees Case at U.S. Supreme Court

June decision expected in First Amendment challenge to mandatory dues for government workers

WASHINGTON, DC - On Monday, February 26, veteran National Right to Work Legal Defense Foundation staff attorney William Messenger argued the blockbuster *Janus v. AFSCME* case before the United States Supreme Court. Messenger, representing Illinois Department of Healthcare and Family Services employee Mark Janus, asked the High Court to recognize that the First Amendment protects public workers from being required to make payments to union officials as a condition of working for their own government.

Mr. Janus is an Illinois child support specialist who filed the challenge after being required to pay union fees to AFSCME union officials even though he opposes many of the positions union officials advocate using his money. Janus feels he would be better off without the union's so-called representation and that compelled speech through forced union dues violates his First Amendment rights of freedom of speech and association.

In the 1977 *Aboud v. Detroit Board of Education* case, a divided High Court ruled that public employees could not be required to subsidize many political and ideological union activities. However the Court left in place forced fees used to subsidize union monopoly bargaining with the government. In a series of Foundation-litigated



Right to Work Foundation staff attorney William Messenger speaks with reporters at the Supreme Court after arguing the blockbuster *Janus v. AFSCME* case.

cases over the last five years, the Supreme Court has questioned the theory underpinning *Aboud*.

'The Biggest Labor Case of the Century'

In the National Right to Work Foundation-won *Knox v. SEIU* (2012) and *Harris v. Quinn* (2014) cases, the Supreme Court made clear that mandatory union payments invoke the highest level of First Amendment protection. Now staff attorneys from the National Right to Work Foundation, who represent Janus along with attorneys from the Illinois-based Liberty Justice

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Appeals Courts Hear Michigan Workers' Challenges to Forced Union Dues Schemes

Michigan union bosses attempting to block workers from exercising rights under Right to Work law

DETROIT, MI - Michigan's Right to Work protections make union membership and financial support strictly voluntary. However, since Michigan enacted Right to Work in 2012, Foundation attorneys have filed nearly 50 legal actions for Michigan workers to enforce their rights under the state's Right to Work laws which cover private and public employees.

Through arbitrary window periods and other hurdles such as in-person photo ID requirements, union officials have attempted to restrict Michigan workers from exercising their right to stop dues payments. Two ongoing legal cases for workers brought by National Right to Work Legal Defense Foundation staff attorneys and argued recently in separate federal Appeals Courts highlight the trickery deployed by union officials to trap individuals into paying forced dues.

Robbie Ohlendorf and Sandra Adams, a part-time stocking clerk and cashier respectively at Oleson's Foods Stores, were recently prevented from exercising their right to end payments to United Food and Commercial Workers Union (UFCW) Local 876. During



Foundation Staff Attorney Amanda Freeman outside the 6th Circuit Court of Appeals after oral arguments.

the summer of 2016, Ohlendorf and Adams submitted letters to UFCW resigning from the union and revoking their authorizations for the union to collect dues payments from their paychecks.

UFCW union officials denied both employees' requests to end payments by claiming the letters were not submitted during a union-created "window period" nor sent by certified mail. In response, the pair filed a federal class-action lawsuit with free Foundation-provided legal representation in December 2016 against the UFCW.

Grocery Store Employees File Federal Class Action Lawsuit Against Union Officials

They brought the lawsuit on the grounds that union officials violated their statutory rights, and those of their coworkers, by limiting dues revocations to a "window period" and by demanding that such requests be made via certified mail. Arguments in their case were heard in February by a three-judge panel of the Sixth Circuit Court of Appeals. The panel subsequently sided with union lawyers, ruling that the dues deduction authorizations the workers signed were binding on them. Ohlendorf, Adams and their lawyers are now considering whether to seek reconsideration by the full Sixth Circuit or to petition the U.S. Supreme Court to take the case.

"As this case demonstrates, Robbie Ohlendorf, Sandra Adams, and countless other Michigan workers are being trapped into paying forced dues against their will because union bosses have created hurdles solely to block them from exercising their rights," said Mark Mix, President of the National Right to Work Foundation.

Union Officials Demand In-Person Photo ID for Membership Resignation

Opaque "window period" policies are not the only tactics union officials utilize to block workers from exercising their right, as protected by Michigan's Right to Work Law, to resign from membership and stop payment of all union dues or fees.

In October 2014, International Brotherhood of Electrical Workers (IBEW) Local 58 union officials unilaterally imposed a new policy governing the procedures for

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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.

Foundation Defends Uber & Lyft Drivers Targeted for Forced Unionization

Drivers challenging Seattle ordinance designed to force them to pay dues to Teamsters bosses

SEATTLE, WA – National Right to Work Legal Defense Foundation staff attorneys were at the United States Ninth Circuit Court of Appeals in early February, arguing *Clark v. Seattle* for drivers challenging a controversial Seattle ordinance designed to unionize independent ride-sharing drivers through a coercive card check drive and force them to pay dues to the Teamsters union. Dan Clark, lead plaintiff in the suit, and his ten co-plaintiffs use mobile apps like Uber and Lyft to find customers seeking rides.

Under the Seattle ordinance, which the City passed in 2015 after extensive lobbying by Teamsters union officials, any driver who wants to pick up or drop off passengers within Seattle City limits found through apps like Uber and Lyft could be required to pay dues to union officials. At the request of the Teamsters, or other unions, ridesharing companies would be required to hand over the personal information of “qualifying drivers” to the union, which would then use that information to unionize drivers through a coercive card check campaign, which bypasses the protections offered by a secret ballot vote.

With signatures from 50%+1 of “qualifying drivers” – arbitrarily defined by the ordinance as drivers who have completed 52 rides beginning or ending in Seattle in the last 90 days – union officials would gain monopoly bargaining powers over all drivers, regardless of whether they were eligible to participate in the card check certification. This means that Teamster cards collected from a small fraction of all drivers could result in the unionization of more than an estimated 9,000 drivers in Seattle, plus any future drivers, all of whom would be subject to the terms of the union contract, including forced dues.



Frederick Wilson is one of 11 Uber & Lyft drivers represented by Foundation staff attorneys in a legal challenge to Seattle’s forced unionization ordinance.

“Big Labor’s one-size-fits-all, top-down forced unionism is the very antithesis of the ride-sharing model which attracts drivers by connecting them with consumers and providing them the freedom to decide when to work and through which mobile app to find customers,” National Right to Work Foundation Vice President Patrick Semmens said.

Ninth Circuit Court of Appeals Hears Arguments

The drivers originally filed suit against the City of Seattle in the U.S. District Court for the Western District of Washington with free legal representation by staff attorneys from the National Right to Work Legal Defense Foundation and the Washington State-based Freedom Foundation. The drivers’ suit argues that the Seattle ordinance is preempted by the National Labor Relations Act and that imposing forced union representation and forced dues on them violates their First Amendment rights of free speech and freedom of association.

After a District Court judge ruled against the drivers last August, the case was appealed to the Ninth Circuit Court of Appeals. In addition to the drivers’ lawsuit, the same three judge panel of the Court of Appeals heard arguments

in a separate legal challenge to the Seattle ordinance which contends that the forced unionization ordinance violates federal anti-trust law. Rulings in both cases are expected in the next few months.

Seattle’s ordinance is the first-in-the-nation ridesharing driver forced-unionization scheme. Whether or not it is deemed legal is expected to have national ramifications. Other states and cities have indicated they would implement similar schemes to force Uber and Lyft drivers into union forced-dues ranks, should the Seattle scheme survive the current legal challenges. Many experts think the Supreme Court may ultimately decide the issue.

“Faced with the spread of Right to Work laws and workers increasingly rejecting compulsory unionism when actually given a choice, union bosses are now looking at independent contractors as potential new sources of forced dues revenues,” observed Semmens. “Unfortunately, the popularity of Uber and Lyft makes the hundreds of thousands of drivers who utilize these apps to find passengers targets of politicians who know the contributions they receive from Organized Labor are largely the direct result of union bosses’ forced dues powers.” ☛

Foundation Wins Ruling Defending Kentucky Right to Work

Big Labor's attack on free choice for Bluegrass State workers thwarted ... for now

FRANKFORT, KY - On January 23, Kentucky workers with free legal aid from National Right to Work Legal Defense Foundation staff attorneys won a ruling from the Franklin County Circuit Court dismissing a union boss lawsuit attempting to overturn Kentucky's new Right to Work Law. After Kentucky Governor Matt Bevin enacted the commonwealth's Right to Work law in January 2017, the National Right to Work Foundation established a special legal task force to defend and enforce the law, which ensures that union membership and financial support are strictly voluntary.

Foundation Task Force Fights Legal Battles in the Blue Grass State

In May 2017, AFL-CIO and Teamsters Local 59 union officials filed their lawsuit seeking to restore their forced-dues powers by asking the courts to declare the Right to Work Law unconstitutional. Soon after, pro-Right to Work Blue Grass state workers turned to the Foundation to defend the law and filed a motion to intervene in the case because without Right to Work they could be subject to forced dues.

On July 26, the Franklin Circuit Court granted the Foundation-aided workers' motion to intervene in the case. The Court noted that the outcome of the union lawsuit "impacts an employee's compulsory payments to a union" and could "diminish their ability to freely associate with groups with which they ideologically identify."

Then, in January, the Court issued a decision granting the workers' motion to dismiss the union lawsuit and determining that the union lawyers' arguments against Right to Work were entirely without merit.

"We welcome the ruling by the Franklin County Circuit Court upholding Kentucky's Right to Work



With free Foundation legal representation, William and Jacob Purvis intervened to defend Kentucky's Right to Work Law against a union boss lawsuit.

Law, which simply ensures that union membership and financial support are strictly voluntary," National Right to Work Foundation President Mark Mix told reporters at the time of the ruling. "Right to Work laws have long been upheld by appellate courts, including the U.S. Supreme Court, so it comes as no surprise that union bosses' arguments against Kentucky's Right to Work Law were rejected in this case."

Workers Vow To Keep Defending Right to Work

Despite the Kentucky Court's ruling and courts nationwide finding in favor of states' authority to protect workers from mandatory union payments, Kentucky union bosses appealed the Franklin Circuit Court's dismissal of the lawsuit in late February. Fortunately, as full parties to the case, the workers and their Foundation-provided staff attorneys will continue to defend Kentucky's Right to Work Law.

"Rather than wasting tax dollars and workers' dues money continuing this frivolous legal attack on Right to Work, Kentucky union bosses ought to be working to ensure that the representation they claim to provide is actually a service Kentucky employees will voluntarily pay for," noted Mix.

The Blue Grass State is not the only place where Foundation staff attorneys continue to defend the rights of workers from unscrupulous union tactics seeking to block Right to Work protections. In recent years, as Right to Work has spread, workers have turned to the Foundation to defend Right to Work from union boss lawsuits in West Virginia, Idaho, Indiana, Michigan, and Wisconsin.

Defending and enforcing Right to Work laws remains a top priority of the Foundation's legal aid program, because experience shows Big Labor never willingly gives up its forced-dues powers. ♣

Giving the Gift of Freedom

It's Tax Season. Do You Have a Plan?

Tax season deadline is upon us, and many National Right to Work Legal Defense Foundation supporters are considering options to secure tax savings with thoughtful financial planning in 2018.

Congress recently has passed tax reforms that may impact your tax liability. As you prepare and file your 2017 tax returns, you should consider what you can do to alleviate heavy tax burdens now and in the future.

For this reason, some Foundation supporters chose last year to accelerate the charitable gifts they previously planned in order to maximize their impact and the corresponding tax

advantages. This year the increased individual percentage-of-income limit for charitable contributions was raised from 50% to 60%, which may help you. Of course, as in the case of all estate and planned gifts as well as charitable gifts, we urge you to consult with your own tax advisor, accountant, or estate attorney to receive the maximum benefit for you and your loved ones.

As the National Right to Work Foundation celebrates its 50th Anniversary, here are just a few options to consider as you look to defend American workers from coercive unionism through support of the Foundation:

Did
You
Know?

1. Gifts of Cash – provide a tax deduction for the 2018 tax year;
2. Gifts of Appreciated Stock/Securities – if held for more than 12 months, gifts of stock provide a tax deduction for the full market value and no capital gains tax;
3. Will or Bequest – Making an estate gift through a will or a trust is the most common form of planned gift to the Foundation;
4. Gift Annuity (CGA) – A CGA is an agreement whereby you make a charitable gift and we make payments for your lifetime depending on the gift amount and your age. It provides a charitable tax deduction in 2018 and an income stream for you for life.
5. Charitable Lead Trust and Charitable Remainder Trust – These giving options provide tax advantages along with income for the donor or the designee, all while providing long-term financial support for the Foundation's charitable mission.

Your gift will make a real difference in defending worker freedom!

If you have any questions regarding a specific planned gift or you would like a planned giving packet, please contact Ginny Smith by email at gms@nrtw.org or by calling at 1-800-336-3600.

Each planned giving option features different advantages, so please take the time to consult your estate attorney or tax advisor.

Union Bosses Back Down After Mechanic Files Charge for Illegal Retaliation

Mechanic discovered insurance had been canceled by union after he exercised right to resign his union membership

CHICAGO, IL – Following unfair labor practice charges filed by a Chicago-area auto mechanic, International Association of Machinists and Aerospace Workers (IAM) Local 701 union officials quickly backed down and ceased their illegal retaliation scheme. Mike Vallaro filed charges with free legal assistance from the National Right to Work Legal Defense Foundation against the IAM after union officials wrongfully terminated the worker's health insurance in an apparent retaliation for Vallaro's exercise of his right to resign union membership.

The employee of Gerald Subaru, Inc. in Naperville, IL resigned from the union after IAM Local 701 union officials demanded that he and his coworkers abandon their jobs and join a union-initiated strike in August 2016. By resigning prior to the union-ordered work stoppage, Vallaro could continue working and not legally be subjected to IAM internal "union discipline."

Mechanic Slammed with Medical Bills after Exercising His Rights

Despite his resignation, union officials sent Vallaro a letter threatening a disciplinary trial for working during the strike. They claimed that, if he was found guilty by the union tribunal, Vallaro would be forced to pay a monetary fine. In similar situations around the country, union officials have levied fines in the tens of thousands of dollars against workers who defied strike demands.

Understanding his rights, Vallaro turned to Right to Work Foundation staff attorneys for free legal aid and filed the unfair labor practice charge. After learning of the Foundation's involvement, IAM Local 701 notified Vallaro that its trial had been canceled. However, NLRB proceedings in the case



Mike Vallaro's health insurance was canceled due to union retaliation, but Foundation attorneys helped him get it back.

continued.

The mechanic thought that was the last of IAM Local 701's illegal intimidation, until he went into the doctor's office for a medical procedure, only to find that his medical insurance had been canceled. Under the monopoly bargaining contract between the IAM and his employer, all employees are entitled to health insurance. The union controls and selects the insurance plan that covers the employees irrespective of whether they are a union member or not. Additionally, because Illinois is not a Right to Work state, Vallaro is still forced to pay fees to IAM Local 701 officials each month.

The veteran mechanic never received prior notification that his health insurance had lapsed. After conferring with his coworkers he discovered that he was the only worker in the monopoly bargaining unit to have his insurance canceled, making it clear it was in retaliation for his resignation and unfair labor practice charge.

Vallaro faced mounting medical bills as a result of his insurance being canceled. Fortunately, his employer Gerald Subaru was assisting Vallaro

with the bills that would have been covered had IAM union officials not wrongfully canceled the coverage.

Union Officials Back Down after NLRB Charge

In response Vallaro again turned to Foundation staff attorneys, who assisted him in filing another unfair labor practice charge against IAM officials, this time for illegal retaliation and discrimination by violating their monopoly bargaining contract and cancelling Vallaro's insurance. Both charges were being investigated by the NLRB Region 13 office in Chicago, but before the investigation could be completed, the union backed down from its retaliation and reversed its cancellation of Vallaro's health insurance.

"Mr. Vallaro simply wanted to continue working to support himself and his family instead of engaging in a union boss-ordered strike. But because he exercised his protected rights under federal law, he faced a relentless campaign of illegal union intimidation," said Mark Mix, president of the National Right to Work Legal Defense Foundation. "Union bosses' willingness to cancel the health insurance of a worker they still claim to 'represent' just when he needs to rely on that insurance, is another ugly example of union officials abusing their monopoly forced dues powers to attack workers who refuse to toe the union line." ✚



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

www.NRTW.org

Supreme Court Petition: Recognize that Seizing Union Fees Without Consent Violates Constitution

Providers seeking refund of \$30 million in forced union payments

SPRINGFIELD, IL - In January, National Right to Work Legal Defense Foundation staff attorneys filed a petition for certiorari with the U.S. Supreme Court asking the court to hear a case that would clarify when an individual's First Amendment rights have been violated by the seizure of union fees they cannot be required to pay. In the case, thousands of homecare providers are being denied refunds of over \$30 million dollars seized by union officials without their consent.

The *Harris v. Quinn* case - now known as *Riffey v. Rauner* - successfully challenged a scheme enacted by former Illinois Governors Rod Blagojevich and Pat Quinn that classified more than 80,000 individuals who receive state subsidies to provide in-home care to disabled persons as "public employees" solely for the purpose of the providers being unionized and required to pay union fees.

Staff attorneys with the National Right to Work Foundation assisted eight of these providers in filing a federal class-action lawsuit

challenging the forced dues seizures. In 2014 the U.S. Supreme Court ruled in that case that the forced dues scheme violated the First Amendment rights of the in-home care providers.

After the Supreme Court's June 2014 ruling, the case was remanded to the District Court to resolve the remaining issues, including whether SEIU would be required to return more than \$32 million in fees confiscated from nonmembers through the scheme invalidated by the Supreme Court.

Case Could Settle Critical "Opt-In" vs. "Opt-Out" Issue

In June 2016, a District Court judge ruled that, despite the Supreme Court ruling in *Harris*, the SEIU did not have to repay these funds on a class-wide basis. Later the Seventh Circuit Court of Appeals also ruled that, even though these workers never consented to their money being taken for forced dues, their First Amendment Rights were not violated. That conclusion was made

on the grounds that the workers had not objected when the fees were seized, despite the fact that the fees would have been automatically seized from them even if they had objected.

Foundation staff attorneys now ask the Supreme Court to determine whether the "government inflicts a First Amendment injury when it compels individuals to subsidize speech without their prior consent." The issue could impact the rights of all public employees if the Supreme Court rules in the *Janus* case (see page 1) that states cannot compel any union fees from public workers.

"The Supreme Court's *Harris* decision ruled that forcing homecare providers to subsidize union speech violates their First Amendment rights," stated NRTW President Mark Mix. "This petition asks the High Court to further clarify its *Harris* ruling, by making it clear that individuals who have never joined a union cannot be required to take affirmative steps just to protect their Constitutional rights." †

Michigan Workers Challenge Forced Dues Schemes

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resigning formal union membership and revoking dues checkoff authorizations. These procedures required that resignations and revocations take place in-person at the Local 58 union hall in Detroit, Michigan, where the worker would have to present photo identification and a corresponding written resignation and dues checkoff revocation.

Ryan Greene, a worker who lives several hours away from the IBEW Local 58 union hall, decided to exercise his right to resign his formal union membership and revoke his dues checkoff authorization. Upon encountering the restrictive policy created by Local 58 union officials, Greene filed a federal unfair labor practice charge with the National

Labor Relations Board on the grounds that the new policy was unlawful and violated the rights of workers guaranteed in the National Labor Relations Act.

The Regional Director for the NLRB investigated Greene's charge and issued a formal complaint. Eventually the NLRB itself ruled that the policy was an illegal restriction on workers' rights to resign and revoke. Rather than accept the ruling and change their policy, union officials appealed the Labor Board's ruling to the U.S. Court of Appeals for the District of Columbia which heard arguments in the case in early February.

"Numerous courts have struck down limitations that impede an individual's ability to exercise right to resign union membership and

end union payments," observed Mix. "Instead of cooking up schemes to trap workers into paying union dues, union officials should ask themselves why they are so afraid of giving workers an actual choice when it comes to union membership and dues payment." †

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Supporters can also email stories to:
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U.S. Supreme Court

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Center, have asked the Supreme Court to apply the First Amendment precedent of heightened scrutiny to all mandatory union payments required of government employees.

Many Supreme Court observers consider *Janus v. AFSCME* to be one of the biggest, if not the most important case of the term, especially considering that more than 5 million public school teachers, firefighters, police officers and other government employees are currently forced to pay money to union officials. One *Washington Post* headline about the case declared: "The Supreme Court is About to Hear the Biggest Labor Case of the Century."

"Mandatory union fees are the most widespread regime of compelled speech in the nation. It is long past time that public employees' First Amendment rights be protected from being forced to subsidize union officials' speech," said Foundation Vice President and Legal Director Ray LaJeunesse, Jr.

"We are hopeful that by the end of the Supreme Court's term it will issue a decision ensuring that union payments for public employees like Mr. Janus are strictly voluntary, at which point the challenge will be enforcing those protections for millions of government workers," LaJeunesse added. †

"Overturning mistaken decisions is an occasional duty of the Supreme Court, whose noblest achievement was the protracted, piecemeal repudiation, with *Brown v. Board of Education* (1954) and subsequent decisions, of its 1896 ruling that segregated 'separate but equal' public facilities were constitutional. This Monday, the court will hear oral arguments [in *Janus*] that probably will presage another overdue correction."

George F. Will (Washington Post 2/23/18)



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

"The Supreme Court is about to hear the biggest labor case of the century," the *Washington Post* recently declared.

On February 26, National Right to Work Foundation staff attorneys squared off against union lawyers in front of the nine black-robed Justices in that case, *Janus v. AFSCME*.

For those of us who have been in the trenches fighting compulsory unionism for years or decades, it's easy to see why the media has taken such an interest in the case.

The stakes are enormous.

A victory in *Janus* will grant all public sector workers in the country the freedom to keep the union bosses out of their paychecks without fear of being fired – lifting the shackles of forced unionism from millions of teachers, police officers, and civil servants while delivering a devastating blow to Big Labor's billion dollar political war chest.

What was not easy was getting here. The possibility of a Supreme Court decision essentially protecting the Right to Work for all government workers was unthinkable until recently.

That changed after years and years of Foundation litigation, leading up to a Foundation-won *Knox* decision in 2012 in which Justice Samuel Alito wrote that prior precedents "have substantially impinged upon the First Amendment rights" of independent-minded workers who exercise their right to refrain from union membership.

Union lawyers and their apologists in academia were horrified that the Supreme Court had the audacity to suggest that forcing civil servants to pay dues or fees to unions might run afoul of the First Amendment – and feared the day when Foundation staff attorneys brought a case back to the Court that could present such a question.

After years of challenges, some foreseen and some not, we are once again at the tip of the spear.

We never took our eye off the ball, and we persevered – and we could not have done it without the generous support of concerned citizens like you.

Sincerely,

Mark Mix