



Foundation *Action*

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Supreme Court Asked to Hear Challenge to Monopoly Bargaining Scheme

Massachusetts educators can only affect their working conditions if they waive their First Amendment rights

WASHINGTON, D.C. – In July staff attorneys for the National Right to Work Legal Defense Foundation asked the U.S. Supreme Court to hear *Branch v. Commonwealth Employment Relations Board*, a lawsuit brought by four Massachusetts educators challenging the application of the state's union monopoly bargaining law as a violation of their constitutional rights.

The educators argue that the state law, which is manipulated by union bosses to block teachers who are not union members from voting or otherwise voicing their opinions in the determination of their own working conditions, illegally deprives non-member teachers of their First Amendment rights.

Plaintiffs Say NEA Teacher Union Bosses Violated First Amendment Rights

The four plaintiffs hail from the University of Massachusetts and the Hanover School Committee. Each has their own reasons for rejecting membership in the National Education Association (NEA) and its local affiliates.

While the 2018 Foundation-won *Janus v. AFSCME* Supreme Court decision guarantees that union fees and membership are strictly voluntary for all public sector workers, the policy in question unconstitutionally forces them to become full union members just to be able to impact their work



Plaintiffs Dr. Andre Melcuk (left) and Dr. Wm. Curtis Conner (right) asked the U.S. Supreme Court to hear their case challenging Massachusetts' government union monopoly bargaining scheme as a violation of their First Amendment rights.

environment.

To have any say in their own work conditions, non-members like the four educators would have to waive their First Amendment rights under *Janus* and join the union, which means paying full union dues and funding union boss political activities.

Four Massachusetts Educators Ask Supreme Court to Apply *Janus* Precedent

The lead plaintiff, Dr. Ben Branch, is a longtime finance professor at the University of Massachusetts Amherst. He is a colleague of fellow plaintiff Dr. Wm. Curtis Conner, who teaches chemistry there.

Plaintiff Dr. Andre Melcuk is Director of Departmental Information Technology at the Silvio O. Conte National Center for

Polymer Research at the University. Dr. Melcuk was born in the Soviet Union and opposes the union based on his dislike of collectivist organizations.

See 'Educators Challenge' page 7

IN THIS ISSUE

- 2 Foundation Aiding Employees Nationwide to End Restrictions on *Janus* Rights
- 3 Foundation Defends Medicaid Providers from Big Labor Dues Skimming Schemes
- 4 Final Briefs Filed at Appeals Court in Continuation of *Janus v. AFSCME*
- 5 Federal Board Adopts Foundation-Advocated Reform to Union Decertification Rules
- 6 Foundation Winning Protections Against Forced Unionism at Trump NLRB

Foundation Aiding Employees Nationwide to End Restrictions on *Janus* Rights

California math professor wins refunds of illegal dues deductions as more lawsuits are filed

VENTURA, CA – National Right to Work Legal Defense Foundation staff attorneys are fighting nationwide in courts to ensure that public sector employees from every walk of life can exercise their First Amendment rights under the *Janus v. AFSCME* decision, which in 2018 eliminated union dues and fees as a condition of employment for all public sector workers and permits dues deductions only with the affirmative consent of an employee.

Obstinate union bosses have thrown up many roadblocks to prevent the workers they claim to represent from exercising those rights, often enforcing illegal “window periods” where workers can only cut off dues within a tiny, union boss-determined time period once every year or few years, and refusing to return dues seized in violation of workers’ First Amendment rights before or even after the *Janus* decision came down.

In California, Foundation attorneys recently secured a successful settlement for Michael McCain, a math professor in the Ventura County Community College District (VCCCD). American Federation of Teachers



Foundation staff attorneys are currently litigating more than 30 cases to enforce workers’ Janus rights, which have yielded successful settlements and dues refunds for employees like math professor Michael McCain.

(AFT) union officials forcibly took several months’ worth of illegal dues from McCain after he tried to resign his union membership in the wake of the *Janus* decision.

The AFT officials argued that McCain had missed the so-called “window” to resign, even though his dues authorization card made no mention of this rule. Foundation attorneys countered that the AFT’s restrictive policy constituted a

“violation of [McCain’s] First Amendment right not to subsidize union activity without [his] affirmative consent and known waiver of that...right, as recognized by the U.S. Supreme Court in *Janus v. AFSCME*.”


Citing *Janus*, Foundation staff attorneys filed a class-action lawsuit to stop the illegal policy and to secure refunds for McCain and other VCCCD teachers of “dues deducted . . . without their affirmative and knowing consent.”

Successful Foundation Settlement Wins Refunds for All Affected Professors

Rather than face off against Foundation attorneys and the *Janus* precedent in court, VCCCD and AFT officials settled the case. Union officials will now “fully and unconditionally” refund to McCain and other teachers who asked to stop paying union dues since *Janus* was decided all dues illegally taken since the dates of their requests, plus interest.

Additionally, AFT and VCCCD are required by the settlement to not “adopt any policy that restricts to a yearly window period the time” when an employee can revoke his or her dues authorization.

“Union boss schemes like annual ‘escape periods’ serve no purpose other than to continue the flow of illegal dues into union coffers,” observed National Right to Work Foundation President Mark Mix. “All American workers deserve the freedom that *Janus* promises.”

Though several Foundation lawsuits have yielded favorable settlements and promises to abide by *Janus* from union bosses even in states like California with heavily ingrained forced unionism laws, Foundation attorneys are fighting for precedents at federal courts that will wipe out union boss schemes meant to thwart *Janus*. 

Foundation Action

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Foundation Defends Medicaid Providers from Big Labor Dues Skimming Schemes

Union bosses and allied states defy Foundation-backed federal protections for homecare providers

SAN DIEGO, CA – At the urging of the National Right to Work Foundation and comments filed by over 1,200 Foundation supporters, the Department of Health and Human Services (HHS) recently issued a rule that closed an Obama-era loophole allowing union bosses to skim over \$1 billion in union dues and fees from Medicaid payments intended for providers.

Unsurprisingly, union bosses are refusing to accept this rule and comply with federal law. As a result, Foundation staff attorneys have ramped up legal action in an effort to force Big Labor to end its unlawful schemes to divert union dues from payments to Medicaid providers.

Foundation Files Class Action Lawsuit for California Homecare Providers

With free legal aid from National Right to Work Foundation staff attorneys and the West Coast-based Freedom Foundation, a group of California homecare providers filed a class action lawsuit after union officials continued seizing union dues from their Medicaid payments.

The providers allege in their suit that the deduction of union dues from their Medicaid payments violates the provision of the federal Medicaid statute that prohibits the diversion of Medicaid monies to persons or institutions that are not providing services to disabled individuals.

Union officials used a special exemption to Medicaid regulations granted to them by the Obama Administration in 2014 as legal cover for this skim scheme.

In August 2018, the National Right to Work Foundation submitted formal comments to U.S. Centers for Medicare & Medicaid Services (CMS) supporting the agency's proposal to clarify that the



Under Harris v. Quinn, brought for plaintiff Pam Harris (right) who cares for her son Josh in their home, providers cannot be required to pay union dues; however union bosses continue to skim dues from Medicaid funds in violation of federal law.

diversion of Medicaid payments from providers to third parties, including unions, violates federal law. Those recommendations were adopted in early May and were set to go into effect on July 5, 2019.

In addition to violating federal Medicaid law, the providers charge union officials with violating their legal rights by unlawfully restricting them from stopping payment of union dues and fees, as is their right under the landmark Foundation-won *Harris v. Quinn* and *Janus v. AFSCME* decisions by the U.S. Supreme Court.

When the providers attempted to exercise their legal rights under *Harris* and *Janus* to refrain from financially subsidizing a union and cut off any further dues or fees deductions, union officials refused to honor their requests. Despite the lack of valid consent by providers, the California State Controller, at the behest of American Federation of State, County and Municipal Employees (AFSCME) union officials, continued to deduct union dues from the Medicaid funds intended for providers.

"Once again union bosses have ignored federal law, legal precedent

and the clear wishes of the workers they claim to 'represent' simply to line their pockets with compulsory dues," said National Right to Work Foundation Vice President Patrick Semmens. "Instead of informing workers of their First Amendment rights and allowing them to choose whether to pay dues to a union voluntarily, union officials nationwide are attempting to trap workers into paying forced dues."

Medicaid Providers Move to Defend Rule Ending Illegal Union Medicaid Skim

In a separate legal action, ten Medicaid providers, with free legal aid from the National Right to Work Foundation and the Freedom Foundation, moved to intervene in a recently filed federal lawsuit challenging the rule adopted by HHS. The providers support the Trump Administration's rule because it helps to protect their right not to fund union activities in violation of their First Amendment rights. They argue repealing the rule would result in their legal rights

Final Briefs Filed at Appeals Court in Continuation of *Janus v. AFSCME*

Foundation seeks first-in-nation appellate court ruling to order non-member dues refunded

CHICAGO, IL – Although *Janus v. AFSCME* secured a landmark victory at the U.S. Supreme Court for government employees' First Amendment rights, Mark Janus' case is not over because AFSCME union bosses have refused to return the funds taken from him in violation of the First Amendment.

Janus' attorneys from National Right to Work Foundation and Illinois-based Liberty Justice Center have completed briefing with the Seventh Circuit Court of Appeals on the issue of whether union officials can keep money they seized from non-members in violation of their constitutional rights. The case is likely to mark the first time an appellate court will rule on the issue, potentially establishing a precedent that could result in the return of hundreds of millions of dollars seized by union bosses in violation of the *Janus* precedent.

Janus Secured Workers' First Amendment Rights

Mark Janus was an Illinois child support specialist whose case was successfully argued at the Supreme Court by National Right to Work Foundation staff attorney William Messenger.

The Supreme Court's June 27, 2018, decision in *Janus*' favor found that any union fees taken from workers like Mark Janus – who was not a member of AFSCME – without the workers' affirmative and knowing consent violate the First Amendment. Justice Samuel Alito wrote for the majority that compulsory fees "[violate] the free speech rights of non-members by compelling them to subsidize private speech on matters of substantial public concern."

The Supreme Court sent the case back to the lower courts to determine, among other things, whether Janus is entitled to all the union fees he was forced to pay



Veteran Foundation staff attorney William Messenger, seen here speaking to reporters after Supreme Court oral arguments in Janus, leads the Foundation's Janus enforcement task force.

since March 23, 2013.

Janus' appeal comes after a district court judge ruled that union officials are not required to refund forced fees seized from non-member workers prior to the *Janus* decision.

"Just like a thief would not be allowed to keep the money he stole, union bosses must be forced to return funds unlawfully seized from workers," said National Right to Work Foundation Vice President and Legal Director Ray LaJeunesse. "It would be a massive injustice to deny workers victimized by Big Labor the refunds to which the Supreme Court made clear they are entitled."

Seventh Circuit Likely First Appeals Court to Rule on Non-member Refunds

Janus will likely be the first case in which an appellate court will evaluate the so-called "good faith" defense that union lawyers have asserted in response to worker


lawsuits seeking refunds, arguing that union officials should be allowed to keep funds seized prior to the *Janus* decision.

This contention has generally succeeded in lower courts despite the Supreme Court asserting that union bosses have been "on notice" for years that mandatory fees likely would not comply with the heightened level of First Amendment scrutiny articulated in the Supreme Court's earlier *Knox v. SEIU* decision, also won by Foundation staff attorneys.

Mark Janus is asking the Seventh Circuit to rule that he is entitled to refunds of approximately \$3,000 in fees he was forced to pay since March 23, 2013, as the statute of limitations permits. In addition, the case has significant implications for dozens of other cases being litigated around the country for hundreds of thousands of other workers seeking the return of forced fees seized unlawfully by union officials.

Janus Refund Efforts Continue Nationwide

Foundation staff attorneys are currently litigating over a dozen such cases that collectively seek over \$120 million in refunds for non-members forced to pay union fees before *Janus*. Other ongoing lawsuits and potential cases could result in half a billion dollars or more returned to government workers from union treasuries.

"The *Janus* case is a milestone of worker freedom, but union bosses continue to block workers from exercising their rights and deny workers refunds for dues and fees seized against their wishes," said LaJeunesse. "We hope the Seventh Circuit Court of Appeals will follow the clear logic of the Supreme Court's decision in *Janus* and establish that union bosses cannot profit from violating workers' First Amendment rights." 

Federal Board Adopts Foundation-Advocated Reform to Union Decertification Rules

National Mediation Board simplifies process for workers under Railway Labor Act to remove a union they oppose

WASHINGTON, D.C. – In late July the National Mediation Board (NMB) issued its final rule simplifying decertification procedures under the Railway Labor Act (RLA). The change enables workers in the airline and railway industries to more easily vote to remove a union that lacks the support of a majority of workers.

Before the decision to simplify the process, the NMB used a confusing process that required individual employees to create a fake “straw man” union to replace the incumbent union as the monopoly representative. The decertification process is particularly important because under federal law RLA unions can force workers to pay union dues or fees as a condition of employment even where state Right to Work laws protect other employees from forced union dues.

New Straightforward Rule Vindicates Foundation Campaign for Reform

“The Foundation has long advocated this type of change in the union decertification process and we are pleased the NMB has – as we called upon it to do in comments filed earlier this year – finally made this commonsense reform,” National Right to Work Foundation Vice President Patrick Semmens said at the time.

The NMB’s final decision provides a straightforward procedure for the decertification of a union, meaning workers who do not want union representation won’t have to jump through the hoops of creating and voting for a “straw man” union just to decertify the union that currently has monopoly bargaining power over their workplace.

The NMB’s final rulemaking notice reads: “The Board believes this change is necessary to fulfill the statutory mission of the Railway Labor Act by protecting employees’



At the Foundation’s urging, the NMB removed unnecessary hurdles and simplified the process for rail and airline employees to remove unpopular unions from their workplaces.

right to complete independence in the decision to become represented, to remain represented, or to become unrepresented.”

“This change will ensure that each employee has a say in their representative and eliminate unnecessary hurdles for employees who no longer wish to be represented,” the NMB continued.

The National Right to Work Foundation has long called for these rules to be updated. Foundation attorneys participated in the formal comment period process and appeared at a public hearing to address the NMB and deliver the Foundation’s position. The final rule specifically references the Foundation’s comments, vindicating its efforts in the rulemaking process.

Board Eliminates Confusing ‘Straw Man’ Election Rules

“The National Right to Work Legal Foundation (Right to Work) stated that the proposed change is ‘long overdue,’ and the [Notice of Proposed Rulemaking] is ‘needed to ensure that all employees have an equal and fair choice regarding

union representation. The Board has statutory authority to adopt the proposed rules, and should do so as soon as possible,” the NMB final rule reads.

The confusing rules previously forced individual employees to concoct a “straw man” union to replace the incumbent union as the monopoly representative. Once elected by a majority of the workers, the new “straw man” representative could disclaim collective representation, but was not legally required to do so.

“At long last the National Mediation Board is providing airline and railroad workers covered by the Railway Labor Act a straightforward way to remove unwanted union ‘representation’ through a direct decertification vote,” Semmens said.

“The previous system – in which workers had to create a ‘straw man’ union just to challenge an incumbent union – only served to stymie workers’ rights and demonstrated the historic bias of the NMB in favor of compulsory unionism,” said Semmens. “It wasn’t until the Foundation-won case of *Russell v. NMB* in 1983 that workers even had an established legal right to throw off their union ‘representative,’ albeit only through the unnecessarily complicated “straw man” system which is finally being replaced with a simplified process to allow workers to exercise that right.”

In addition to submitting the formal comments in May, veteran Foundation staff attorney Glenn Taubman testified in favor of the rule change at the NMB hearing in late March.✚



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Foundation Winning Protections Against Forced Unionism at Trump NLRB

Series of victories adds protections against illegal forced dues, being trapped in union ranks

WASHINGTON, D.C. – In a series of recent victories, the National Labor Relations Board (NLRB) ruled in favor of workers challenging coercive union official practices, with free legal aid provided by the National Right to Work Foundation. The rulings are a stark departure from the Obama NLRB, which regularly stymied the rights of independent-minded employees opposed to associating with union bosses.

Foundation Wins Appeals in Dues Checkoff Cases

In separate cases brought by Foundation staff attorneys for Kacy Warner, a hospital worker, and Shelby Krockner, a Kroger grocery employee, the NLRB General Counsel ruled for the workers and ordered Regional Directors to prosecute union officials' actions related to language in union dues checkoff forms.

The General Counsel's decision to sustain Warner's appeal concerning the checkoff authorized even more additions to the charges, saying the National Nurses Organizing Committee (NNOC) union violated the NLRA by "maintaining confusing and ambiguous dual-purpose authorization forms that unlawfully restrained employees in the exercise of their Section 7 rights."

The General Counsel noted that the union's forms failed to tell workers they can revoke authorizations for dues deductions after the union's contract expires, failed to give workers adequate time to revoke authorizations, unlawfully required workers to use certified mail to send revocation requests, and failed to give "any indication to employees that payroll deduction authorization is voluntary."

This came just a week after the General Counsel sustained another Foundation-led appeal for Krockner,



Staff attorney Glenn Taubman testified before Congress in July that existing NLRB rules wrongly favor union bosses over workers.

who charged United Food and Commercial Workers (UFCW) union officials with illegally forcing her to sign a dues checkoff authorization. In both cases, the NLRB General Counsel authorized even more charges against union officials for misleading and confusing language regarding union dues deductions.

NLRB Regions Instructed to Prosecute *Beck* Violations

Also in July, the NLRB Division of Advice and General Counsel instructed regional directors to issue complaints against unions when union officials fail to inform employees of the amount of reduced union fees they can pay by objecting under the *Communication Workers of America v. Beck* U.S. Supreme Court decision.

The memos instruct NLRB Regional Directors to more stringently enforce workers' *Beck* rights which protect workers from being forced to fund nonchargeable union activities such as union political activities. A memo issued to the Director of NLRB Region 32 read in part that "it is difficult for an employee to make an informed decision about whether to become a *Beck* objector without knowing the amount of savings that would result from the decision."

"The Foundation is proud to have represented the California employee

whose charge against the UFCW resulted in this Advice Memo, as well as necessitating this heightened disclosure standard by winning the *Beck* decision at the Supreme Court and the *Penrod* decision at the D.C. Circuit Court of Appeals," National Right to Work Foundation Vice President and Legal Director Ray LaJeunesse said.

Foundation staff attorneys are currently litigating several additional cases to secure and expand workers' protections under *Beck*.

Ruling Aids Workers Trapped in Union Ranks They Oppose

In another Foundation victory for independent-minded workers in July, the NLRB issued a decision that limits union officials' ability to game the NLRB system to trap workers in monopoly union ranks. The ruling allows employers to withdraw recognition from a union when a majority of its workers sign statements opposing unionization.

Foundation staff attorneys represented two workers, Brenda Lynch and Anna Marie Grant, who spearheaded the collection of signatures from a majority of workers opposed to union representation. Their employer complied with their wishes and sent the union bosses packing. After United Auto Workers (UAW) union officials sought to foist the union back onto the workers despite their clear opposition, Foundation staff attorneys persuaded the NLRB to uphold the UAW's ouster.

"Instead of union lawyers playing legal games for months or even years to block the removal of a union that lacks majority support, the Board majority takes the common sense approach of asking union officials to prove their claim of support in a secret ballot vote of the workers," said LaJeunesse. 🇺🇸

Protect America from Forced Unionism:

Make A Planned Gift to the Right to Work Foundation Today!



Experts advise putting a will or estate plan in place now to avoid putting an unnecessary burden on family members later. Including the National Right to Work Foundation in your estate and giving plans allows you to invest in the Foundation's battle against Big Labor coercion while enjoying the tax advantages of supporting an IRS-recognized charity.

In addition to including the Foundation in your will or estate, Foundation supporters are increasingly taking advantage of the following planned giving options, each with its own specific benefits:

Charitable Lead Trust

A gift to the Foundation now; return of principal later.

- You can make a significant, ongoing gift to the Foundation;
- Future economic security for you as well as your family because the principal may be returned to you or your estate;
- You may be able to provide your family with a greater inheritance than would otherwise be possible without an estate plan;
- You can reduce or eliminate income, estate and gift taxes now and in future years.

Charitable Remainder Trust

Receive income now; provide a gift to the Foundation in the future.

- Increase income for low-yielding assets;
- Reduction of capital gains, estate or gift taxes for your estate that would otherwise be due upon death;
- Diversification of your investments and the potential for tax-free growth;
- Creation of a source of a needed income stream for your family or close relatives you designate in your Trust.

Regardless of whether you are considering your estate plans for the first time or are reviewing the ones you have in place already, there is a sense of relief when you take the time to plan ahead with an estate strategy. Additionally, by including the **National Right to Work Legal Defense and Education Foundation, Inc.** in your estate plans you can join the Foundation's Legacy Society.

As with all planned gifts, please be sure to contact your estate attorney or tax advisor to help you and your family formulate the best plan for the future. If you have any questions or need additional information, please contact Ginny Smith, Director of Strategic Programs for the Foundation, at 1-800-336-3600.

National Right to Work Legal Defense and Education Foundation, Inc. 8001 Braddock Road, Springfield, Virginia 22160

Educators Challenge Monopoly Bargaining Scheme

continued from page 1

Plaintiff Deborah Curran is a long-term teacher in the Hanover Public Schools system. The union officials who supposedly "represent" her attempted to invalidate her promotion to a position mentoring new teachers and pushed to have her investigated and suspended. She ultimately spent nearly \$35,000 of her own money battling union officials just to protect her job.

The petition comes after the Massachusetts Supreme Court

decided the case against the group in April.

"The Massachusetts Supreme Court's refusal to apply the *Janus* ruling has left these educators facing a legally untenable situation: Either they can avoid associating with a union with which they disagree and lose their voices in the workplace, or they can waive their *Janus* rights and have their money used for ideological causes they oppose," commented National Right to

Work Foundation President Mark Mix. "The state of Massachusetts is forcing these educators to fund state legislators' union political allies if they want even the most limited participation in the government-created bargaining process that controls their conditions of employment."

"Such schemes border on extortion and it's time for courts to acknowledge it," added Mix. [†]

Foundation Fights Obama Administration Dues Skim Rule

continued from page 3

being violated.

AFSCME and Service Employees International Union (SEIU) officials and the pro-Big Labor Attorneys General of California, Connecticut, Oregon, Massachusetts, and Washington State filed this challenge to the Trump rule in May.

Although a federal circuit court judge denied the providers' motion to intervene, the judge granted National Right to Work Foundation staff attorneys the ability to file a brief in the case. The providers' Foundation staff attorneys can appeal the decision to deny the providers' motion to intervene should the judge rule against the Trump Administration and strike down the rule.

"Providers are right to oppose this lawsuit's blatant attempt to enable union bosses to skim union dues in violation of federal law and deserve a voice in this lawsuit," said Semmens. "The hysterical response by Big Labor and its political allies to this simple clarification of longstanding federal law suggests they are worried that many members union officials claim to represent won't pay dues once they realize they have a choice." ☝

**National Right to Work
Legal Defense Foundation**

**Rated "A" by
CharityWatch**

Source: *Charity Rating Guide*
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of Philanthropy



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Union bosses across the board have utilized every trick in the book to trap workers under their forced-dues and monopoly bargaining schemes.

That's why, over the years, the National Right to Work Foundation has pursued legal action against Big Labor at every possible level to roll back forced unionism.

This persistent blocking and tackling approach has proved enormously successful. In fact, a recent victory at the National Mediation Board (NMB), which administers labor law in the railway and airline industries, demonstrates just how this strategy has paid off.

For decades workers in these industries had no way to get rid of a union they opposed. But in 1983 Foundation staff attorneys won *Russell v. NMB*, establishing the right of railway and airline workers to at least a path to free themselves from forced union ranks.

Even with this Foundation-won step forward, the process for workers to decertify a union remained overly complex and arduous.

So we kept fighting using whatever means possible. By submitting formal comments to the NMB and providing expert testimony, the Foundation pressured the Board to act.

Finally this summer, the NMB issued a rule dramatically simplifying the process to remove an unwanted union. In their decision, the Board specifically cited the Foundation's advocacy for this "long overdue" rule change.

This victory at the NMB is a credit to the persistence of the Foundation and you, its supporter. And with your continued backing, the Foundation will keep fighting forced unionism at every turn.

Thank you for your generous investment which makes victories like this one possible. I look forward to partnering with you in the fight ahead against forced unionism. You're making a real difference.

Sincerely,

Mark Mix