Foundation Action

The bi-monthly newsletter of the National Right to Work Legal Defense Foundation, Inc.

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Administration Lawyer Undercuts Another Foundation Case, Abruptly Resigns

Government's top lawyer again argues union boss points in U.S. Supreme Court

WASHINGTON, DC – United States Solicitor General Paul Clement has just resigned from the Department of Justice, but the damage has already been done.

In May, the Bush administration's top lawyer filed arguments in the Foundation's upcoming Supreme Court case which again undercut the First Amendment protections of employees laboring under forced unionism.

The Senate confirmed Clement's nomination in 2005 and he has since made oral arguments for the United States in 49 Supreme Court cases, including the Foundation's 2007 *Davenport v. Washington Education Association* case.

During last year's *Davenport* argument (and much to the noticeable surprise of many court observers and even Justice Sam Alito, among others), Clement parroted the wrongheaded union position on a key question in the high-profile case.

Fortunately, Clement will not be in office when the Foundation's pending *Locke v. Karass* case is argued this fall,

Betrayal: U.S Solicitor General Paul Clement argued for a further undermining in employees' constitutional protections in the pending* Locke v. Karass *case.

and therefore will not have the opportunity to obtain argument time to reinforce the detrimental arguments he made in his *amicus* brief.

"Paul Clement did not quit his post soon enough," said Stefan Gleason, vice president of the National Right to Work Legal Defense Foundation. "He kicked the cause of employee freedom from compulsory unionism in the teeth once again before heading out the door."

Pro-union boss brief highlights Clement's disturbing record

In *Locke*, Foundation attorneys are representing 20 Maine state employees who object to union officials using compulsory dues payments for its vicious lawsuit machine in operation all across America.

Under earlier Foundation-won Supreme Court decisions, employees can be compelled to pay certain dues but have the right to refuse to fund union activities unrelated to collective bargaining in their specific workplaces. However, rather than back the bright line rule proposed by Foundation attorneys, Clement filed a brief advocating a weaker standard that would effectively allow pooling of workers' forced dues in a gigantic union litigation slush fund.

In a post on the National Right to Work weblog (www.nrtw.org/blog), The Foundation took issue with the Solicitor General's expansive interpretation of Big Labor's forced dues privilege:

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IN THIS ISSUE

Planned Giving Strategies Pay Off Now and Later

Past issues of **Foundation *Action*** have laid out several exciting ways that our donors can accomplish their estate planning goals while helping the Right to Work cause. Not only can donors achieve tax efficiency with charitable gifts, but they can save on hefty estate tax bills in the future.

The National Right to Work Foundation's Planned Giving Program provides its supporters with numerous options that can be specifically customized to meet long-term financial needs and goals. Among a few common financial vehicles used to make a planned gift to the Foundation are bequests, charitable gift annuities, or even trusts.

Right to Work supporters share a common goal: the advancement of individual liberty for all and disdain for compulsory unionism across the country. The generosity of donors makes possible the long-term mission of the Foundation to assist union-abused employees while reducing union coercive power.

Charitable gift annuities increasingly popular

Gift annuities offer tax benefits and attractive payout rates to donors age 65 or older. The amount of the guaranteed income payment – either monthly, quarterly, or annually – is set for the rest of the donor's life, based on current age and the amount of the gift.

Itemizing taxpayers receive a substantial charitable federal income tax deduction in the year they establish a gift annuity and a portion of the payments received from the Foundation are tax free for a number of years.

Supporters have many planned giving options

In addition to charitable gift annuities, there are several other tax-advantaged giving options available:

- Gifts of cash (produces a tax deduction in the current year);
- Gifts of securities (provides a tax deduction and no capital gains tax);
- Wills and living trusts (a plan for the future for donors and the Foundation);
- Pooled income fund (provides a tax deduction and a lifetime income stream);
- Charitable remainder or lead trusts (flexible vehicles for income, tax, and charitable giving strategies).

The Foundation hopes donors will seriously consider making a planned gift to ensure it can combat compulsory unionism at all times. Accordingly, Foundation staff stand ready at all times to assist donors in meeting their goals.

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.

If you have any questions, or need addition information on a planned gift, please call Ginny Smith at 800-336-3600 Ext. 3303 or email her at plannedgiving@nrtw.org or visit www.nrtw.org/giving

Foundation Pushes to Close Union Disclosure Loopholes

Department of Labor proposal should be stronger

SPRINGFIELD, VA – In response to a Department of Labor request for input on new union disclosure rules, the National Right to Work Legal Defense Foundation filed detailed comments regarding a proposal to mandate more meaningful financial disclosure on union trust and pension funds.

The official comments, filed by Foundation Staff Attorney Glenn Taubman, urged the Labor Department to go much further than the proposed reforms and close a ridiculous "sensitive information" loophole – a provision that would allow union officials to impede any disclosure they wished simply by labeling certain expenditures "confidential."

Union corruption still rampant

The Foundation's submission described the pervasive nature of union corruption, noting that the Department of Labor is currently engaged in numerous investigations into union-related fraud and embezzlement.

In one case detailed on the Foundation's weblog (www.nrtw.org/blog), the Department of Labor recently launched an inquiry into mismanagement of a union pension fund in Chicago. Investigators uncovered evidence that the firm charged with overseeing the fund spent workers' money on a variety of unrelated purchases, including a local strip club and a Michigan horse farm.

All too often, union bosses misappropriate workers' pension funds. Recent expenditures include a horse farm and strip clubs.

Under new Department of Labor regulations, union officials would be forced to disclose more financial expenditures related to union trusts. The information would be made publicly available over the Internet, a measure intended to improve accountability and allow workers easier access to information on union finances. Although the Foundation is generally supportive of these reforms, the new rules do not go far enough and cannot ever be expected to seriously deter corruption.

Will Secretary of Labor Elaine Chao once again allow her staff to undermine attempts to close union disclosure loopholes?

Loophole subjects employees to retaliation

The new regulatory guidelines include a "Protection of Sensitive Information" provision that would allow union officials to unilaterally declare certain information off limits to public disclosure. The measure is ostensibly aimed at protecting confidential data, but the scope of this exemption gives union officials broad discretion to prevent public inquiry into questionable financial transactions.

"If union officials are able to keep information secret simply by calling it 'sensitive,' meaningful disclosure is a pipe dream," said Foundation Legal Director Ray LaJeunesse. "This money belongs to employees, not union officials. There is no justification for suggesting the money's rightful owners get anything less than full disclosure."

> *"If union officials are able to keep information secret simply by calling it 'sensitive,' meaningful disclosure is a pipe dream"*

The new rules only allow individual workers to ask union officials that "sensitive" financial data be disclosed on a case by case basis, a laughably insufficient condition. Forcing employees to stick

see **LOOPHOLES** *page 8*

Union Boss Monopoly Bargaining Rears Ugly Head

Foundation attorneys respond after union official vows to break the law

NEW CUMBERLAND, PA – Union special privileges turn union officials into bullies while nonunion members are demoted to second-class citizens (or worse).

A new Foundation case highlights one of the many unjust consequences of America's federal policy of union monopoly bargaining.

Recently, National Right to Work Legal Defense Foundation staff attorneys filed charges against the American Federation of Government Employees (AFGE) Local 2004, highlighting the fundamental injustice of monopoly bargaining.

Union monopoly bargaining is fundamentally corrupt

Although Foundation attorneys actively defend the rights of nonunion employees when union officials violate their duty of fair representation, the entire framework of monopoly collective bargaining is morally and fundamentally corrupt.

Union bosses, in an effort to pressure nonmember employees into full-dues-paying union ranks, routinely favor union members during negotiations with management. Seventy five years of experience demonstrates that only scrapping the monopoly bargaining system would ensure that employees are free of union boss discrimination.

Federal law enables union bosses to force millions of American workers to accept union "representation" as a job condition.

Workers should have the freedom to choose to represent themselves in negotiations with management.

"Even convicted criminals have the right to pick their own representation," said Foundation president Mark Mix. "It is appalling that labor laws deny to rank-and-file workers such a right in the workplace."

Workers subjected to union discrimination

In a recent case in Pennsylvania, union brass hung nonunion members out to dry who complained that provisions of the collective bargaining agreement governing work schedules had been violated.

Foundation attorneys filed the unfair labor practice charges at the Federal Labor Relations Authority for five Pennsylvania employees of the Defense Logistics Agency (DLA) because AFGE union officials refused to file workplace grievances for them, citing their nonunion membership as the reason.

However, when actual union members asked union officials to file workplace grievances, the AFGE brass quickly complied.

Union President Laurie Osborne openly admitted to her union's bias, stating: "They're scabs; I'm not going to represent them."

Although dues-paying employees had their compressed work-week schedules restored by the DLA, management only responded to workers mentioned in the official union grievance. Because the AFGE enjoys a monopoly on workplace representation, nonmember employees were denied any other recourse but to work through union officials who despise them.

Union officials maintain double standard

Under federal labor law, union officials are empowered to become the exclusive representatives for all employees regarding workplace matters. This monopoly on bargaining enables union bosses to discriminate against nonmember "scabs" in favor of unionized workers.

Union officials are supposed to "represent" both nonunion and union workers equally in discussions with management, and nonunion workers are forbidden to represent themselves. However, union bosses routinely fail to live up to their side of the bargain.

In the case of AFGE Local 2004, union officials simply refused to provide fair representation for nonmember employees. Harry Evans – a union member who received favorable treatment from management – baldly asserted that the union ". . . will not accept a grievance with non-dues-payers on it."

"They do represent [nonmembers] when it benefits them," said Richard Lepley, one of the plaintiffs. "I mean, it shouldn't matter. We're under the same bargaining unit. When they file grievances it should be for everybody."

Foundation Victory Reveals Widespread Use of Card-Check

Foundation pushes to bring statistics on coercive union organizing out of the shadows

SPRINGFIELD, VA – The Foundation's breakthrough *Dana/Metaldyne* victory last fall has given embattled employees a new tool to stop Big Labor's organizing assaults on their workplaces, and Foundation attorneys continue to press for broader disclosure of union recognition by coercive card-check drives.

Dubbed "the September Massacre" by union bosses, the Foundation's *Dana/Metaldyne* victory requires, in part, union officials to notify the National Labor Relations Board (NLRB) after they use the abusive card-check procedure to obtain monopoly power in a workplace. The NLRB then requires the posting of a notice alerting employees that they have 45 days to file a decertification petition to toss out the newly installed union.

Foundation attorneys recently used a Freedom of Information Act (FOIA) request to obtain data on all such occurrences in the intervening months since the ruling.

In creating the 45-day window of opportunity for employees to seek a decertification election after a card-check drive, the NLRB recognized the coercive nature of card-check unionization drives. Even so, the card-check scheme continues as Big Labor's preferred method, because it enables union militants to publicly bully workers into signing away their rights to self-representation.

Coercive card-check organizing drives widespread

According to information the Foundation obtained from the NLRB, Big Labor has gained power through card-check drives in more than 250 workplaces since October 2007. As demonstrated by the chart below, among the biggest users of "card-check" methods are Service Employees International Union (SEIU) and The International Brotherhood of Teamsters. Also, in two dozen documented cases so far, employees immediately sought a Foundation-won "*Dana/Metaldyne* election" to toss out the union.

So-called card-check organizing drives are uniquely damaging to employee freedom because they allow union militants to publicly browbeat workers into signing cards that then count as "votes" for unionization. In many cases, workers are misled or threatened by union militants into signing a card favoring unionization. Other employees have resorted to calling the police just to stop swarms of organizers from harassing them at home.

These controversial card-check organizing pacts are usually kept secret from employees and the public because they can be embarassing. In addition, as noted by Cornell University's Richard Hurd in a *Chicago Tribune* article about the SEIU's card-check deals with Sodexho, Compass Group USA and Aramark – union officials use secrecy in the hopes of avoid[ing] lawsuits from Right to Work.

Although a list of workplaces newly unionized through card-check elections is available from the NLRB through a FOIA request, Foundation attorneys are now pushing for increased disclosure by having the list be available in real time on the NLRB's website.

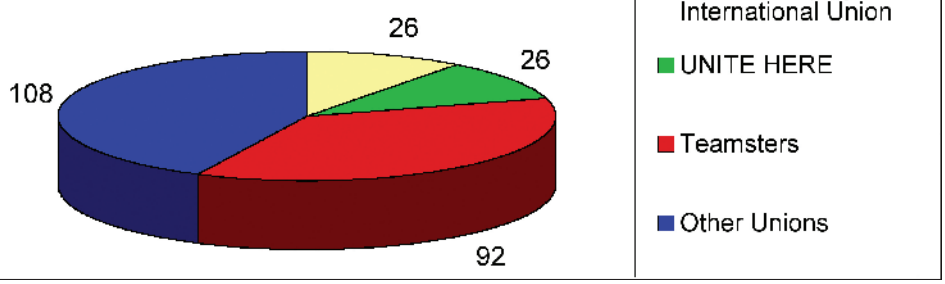
Big Labor makes major push for mandatory card-check legislation

Big Labor's lust for more coercive organizing privileges is also playing out in the legislative arena. Union bosses are going all out to pass the misleadingly-titled "Employee Free Choice Act," a measure that would effectively eliminate secret ballot elections and mandate the more coercive card-check organizing method.

As reported in the May/June issue of **Foundation *Action***, union officials are funneling unprecedented sums of cash into national and state political campaign efforts, hoping to elect enough politicians to ram through this and other compulsory unionism power grabs.

"The *Dana/Metaldyne* decision is an important brake on aggressive card-check organizing drives, but these statistics show that the ruling hasn't done enough," said Mark Mix, president of the National Right to Work Foundation. "Employees should never be subjected to Big Labor's bullying and intimidation when choosing whether to unionize."

Successful Union Card-Check Drives Documented Since October 2007



Foundation Attorneys Expose Shady Union Accounting Scheme

Ninth Circuit couldn't find rationale to permit illegal union manipulation

LOS ANGELES, CA – The Ninth Circuit Court of Appeals has agreed with National Right to Work Foundation attorneys and upheld a surprisingly good labor board ruling that prohibited certain shifty union accounting practices intended to fleece money from nonunion members.

The court affirmed the National Labor Relations Board's finding that Studio Transportation Drivers Local 399 bosses violated employee rights by diverting financial damage awards to offset only costs of non-bargaining activities, thus increasing the total forced fees required of nonmember employees.

Using financial gimmickry, union officials indirectly increased nonmembers' forced dues payments. Under the Foundation's Supreme Court decision in *Communications Workers v. Beck*, union officials cannot require formal union membership or full dues but can force employees to pay dues attributable to unwanted and often detrimental union "representation" in the workplace. But long-standing precedent requires union officials to provide verified financial disclosure of union expenditures, a protection intended to allow employees to refuse to pay for activities unrelated to collective bargaining.

Jimmy Hoffa's Teamsters hierarchy was busted for illegally shifting around the union's books to jack up forced dues.

Ninth Circuit decision strengthens important precedent

The Ninth Circuit panel concluded, "Whenever a union's representational expenses generate secondary income . . . the union could use those funds for representational expenses, which would in turn lower the dues required of full union members and *Beck* objectors alike. Therefore, in choosing to spend the secondary income on political and charitable contributions rather than on representational expenses, [Local 399] is essentially increasing the dues required of *Beck* objectors in order to pay for these contributions. That is exactly what the Supreme Court prohibited in *Beck*."

"Although the court's rebuke of this particular form of financial gimmickry is helpful, Golden State workers would be far better served by a Right to Work law," said Foundation vice president Stefan Gleason. "Preventing union bosses from forcibly extracting membership fees is the only way to put an end to these under-handed practices."

Important Tax Benefits to You

Tax-deductible gifts of cash are excellent. But a gift of stock or other securities to the National Right to Work Foundation can provide donors with an even bigger tax break.

Not only will you be able to support the Foundation and our expanding strategic litigation and media programs right now, but you can save significantly on taxes at the same time. Appreciated securities are subject to a capital gains tax when they are sold. If you donate a gift of stock (that you have owned for more than one year) to the Foundation, the capital gains are not taxable to you. At the same time, you will benefit from a charitable tax deduction for the FULL fair market value of the securities as of the date of the gift.

Please, consider a gift of stock today.
The Foundation's investment account information is as follows:
Electronic Transfer of Securities:
c/o National Right to Work Legal Defense
and Education Foundation, Inc.
UBS Financial Services, Inc.
DTC#0221 Account # WS-39563
If you do decide to send a gift of stock, please let us know at 1-800-336-3600 Ext. 3303.

Clement resigns after undercutting employee freedoms

continued from cover

". . . Mr. Clement apparently has no issue with forcing Maine state workers to pay for union activism *anywhere in the world*, so long as the union satisfies a vague and weak two-part test. In practical terms, Clement's standard would further empower union bosses to charge workers for almost anything under the sun, unless a worker gets a lawyer and forces them to prove that the forced fees are being used for narrowly prescribed purposes."

Solicitor General's tenure marred by other disturbing actions

The *Locke* case was not the first time the Right to Work movement was harmed by Clement's reckless advocacy of union positions.

In *Davenport v. Washington Education Association*, Foundation litigators represented over 4,000 Washington teachers who sought to reclaim forced union dues collected and spent for certain political activities in violation of a state law.

Although the Supreme Court ultimately sided unanimously with Foundation attorneys on the narrow question of the constitutionality of a modest state law, Clement obtained some of the oral argument time and used it to steer the Justices away from ruling on the much more significant aspect of the case.

The broader question at issue was whether nonmember employees who labor under compulsory unionism arrangements should have to go the additional step of affirmatively objecting before being able to pay only the minimum they can be lawfully compelled to pay. The Foundation has long worked to knock down the additional bureaucratic hurdles such as Big Labor's annual object requirement.

When Justice Samuel Alito posed the obvious question of why should the First Amendment permit anything other than a system under which union officials must obtain affirmative consent to use a nonmember's money for politics, Clement responded with arguments made by the AFL-CIO. Specifically, Clement argued that the First Amendment does not bar the forced extraction of dues used for politics from nonunion members unless they make additional objections. In other words, "no" doesn't necessarily mean "no."

The U.S. Supreme Court will hear the Foundation's* Locke *case on October 6, 2008.

Prospects for advancing employee free choice still high

In late June, Foundation president Mark Mix called on the Administration to rescind its outrageous legal brief. Fortunately for employees victimized by Big Labor, even if it is not withdrawn, it is unlikely that Clement's brief will be persuasive and permanently damage the cause of employee freedom.

National Right to Work attorneys are the foremost experts in litigating on behalf of the rights of individual employees who have been subjected to compulsory unionism. When the Foundation's fourteenth U.S. Supreme Court case is heard this fall, the outlook is bright for Daniel Locke and his coworkers.

"Despite the damage done by Clement's shameless kowtowing to the power hungry union bosses, we are confident that Right to Work attorneys will ultimately prevail in the *Locke* case," said Gleason.

YouTube

Check out the Foundation's Youtube Internet Channel at youtube.com/righttowork for video updates.

Loopholes

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their necks out just to see how their money is being spent leaves them vulnerable to retaliation from secretive union brass. Furthermore, individual employees may lack the expertise necessary to decipher Byzantine union book keeping that is intended to obscure expenses.

Although the proposed reforms are a tiny step in the right direction, Foundation staff attorneys continue to push for guidelines mandating full public disclosure of all union financial transactions. Wide-ranging measures aimed at greater transparency may help show where mandatory dues payments are mispent, but they do nothing to address the root problems of compulsory unionism.

"Ultimately, any disclosure regulation is limited," concluded LaJeunesse. "Only when employees are completely free to choose whether to associate with, and to give their hard-earned money to, unions will employees have any leverage to hold union bosses accountable.⚖

Newsclips Requested

The Foundation asks supporters to keep their scissors sharp for clipping news items exposing the role union officials play in disruptive strikes, outrageous lobbying, and political campaigning. Please clip any stories that appear in your local paper and mail them to:

NRTWLDF
Attention: Newsclip Appeal
8001 Braddock Road
Springfield, VA 22160

Supporters can also email online stories to wfc@nrtw.org

Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

As this issue's cover story shows, the cause of employee freedom can be undermined by unexpected sources. As the old saying goes: "With 'friends' like these, who needs enemies?"

Unfortunately, U.S. Solicitor General Paul Clement has once again jumped into a Foundation Supreme Court case to parrot arguments made by union lawyers. It's just the latest example of high level appointees within the Administration undermining the cause.

Meanwhile, with the Administration largely focused on national security, political appointees at the Department of Labor (DOL) and National Labor Relations Board (NLRB) have also undermined the achievement of meaningful results. For example, Administration appointee Andrew Siff used his top post at DOL to help union bosses water down the new union financial disclosures rules. After leaving DOL, he landed himself a cushy job as a Big Labor lobbyist.

The Bush Administration's Labor Board has also been disappointment. Lack of diligence by the White House personnel and political teams left key NLRB posts vacant, crippling the ability to undo rulings by Bill Clinton's NLRB which overturned almost 1200 years of precedent in favoring Big Labor.

Perhaps a few Administration operatives naively hoped that helping the union bosses with their forced unionism agenda would somehow blunt Big Labor's attacks. The results of recent elections – and the apparent direction of the upcoming political races – show how sadly these individuals were mistaken.

These disappointments have made one thing clear: the vital need for the National Right to Work Foundation and its principled, uncompromising advocacy. Without your support, the Foundation could not be a vanguard defending the rights and values you and I hold dear. Thank you.

Sincerely,

Mark Mix