Foundation Action

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

Vol. XXVIII, No. 4 | 8001 Braddock Road • Springfield, Virginia 22160 | www.nrtw.org | July/August 2008

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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Clement resigns after undercutting employee freedoms

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". . . 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.

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