



# Foundation Action

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

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## Right to Work Foundation Appears on Verge of Winning 8th U.S. Supreme Court Victory

***Foundation optimistic High Court will rule that union officials have no "right" to forced dues for politics***

WASHINGTON, DC – On January 10, 2007, the U.S. Supreme Court heard oral arguments in *Davenport v. Washington Education Association* (WEA) union, a critically important case National Right to Work Foundation attorneys brought to the High Court for 4,000 nonunion teachers from Washington state.

The appeal followed a convoluted ruling by the Washington State Supreme Court which slapped down a well-meant but ineffective campaign finance regulation – referred to as “paycheck protection” – and used it as a springboard to inflict sweeping damage to employee rights. The Washington state statute had tried, but failed for an array of reasons, to restrict WEA union officials from spending nonunion workers’ forced union dues on politics.

“The *Davenport* case is a legal rescue mission that should never have been necessary,” said Mark Mix, president of the National Right to Work Foundation.

“In responding to Washington’s



**Foundation President Mark Mix (right) joins lead plaintiff Gary Davenport (left) in addressing the media on the steps of the U.S. Supreme Court.**

‘paycheck protection’ law, an activist ruling by the Washington State Supreme Court created from whole cloth a constitutional ‘right’ for union officials to take dues from nonunion employees earmarked for politics. Unless overturned, this precedent could cause sweeping damage to employee rights across America.”

National Right to Work attorneys immediately recognized that the Washington ruling could provide union lawyers with ammunition to attack the 22 state Right to Work laws across the country. However, at the same time, Foundation attorneys found a major opening to advance the cause of employee freedom in this otherwise defensive battle, as explained later.

## Justices’ questioning strongly favors employees

Right to Work forces were encouraged by the tenor of questioning during the oral argument, as the majority of the Supreme Court Justices appeared to agree with the written arguments made by Foundation attorneys that the Washington court should be reversed.

Responding to WEA union lawyer John West, Chief Justice John G. Roberts belittled the notion that a union has a constitutional “right” to spend nonmembers’ forced dues on politics without consent. “Well, surely you don’t get to say, well, this is in your interest, whether you want to spend the money or not,” he stated.

see **MAJOR BREAKTHROUGH** page 7

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# Union Lawyer Told Objecting Ohio Teacher to ‘Change Religions’

*Foundation helps teacher attack discriminatory statewide forced unionism law*

COLUMBUS, OH – A St. Marys-area teacher filed a federal lawsuit challenging the constitutionality of an Ohio law denying public employees the right to a religious objection to paying union dues unless they belong to certain state-approved religions.

As a Catholic, Carol Katter finds many of the political positions taken by the National Education Association (NEA) union hierarchy and its affiliates to conflict with her religious beliefs. But, because Ohio is not a Right to Work state, the requirement that she pay union dues or forfeit her job presents a crisis of conscience.

When the 21-year veteran in the St. Mary's school district objected to supporting the union's social agenda, the state's labor board told her that she was out of luck. In fact, the Ohio Education Association (OEA) union's general counsel told her that she would need to "change religions," because state law only entitles two specific denominations to an exemption from the state's draconian forced unionism mandates.

In response, National Right to Work Foundation attorneys filed a complaint



*Mathematics and language arts teacher Carol Katter is standing up for the First Amendment in the face of ugly union coercion.*

in the U.S. District Court for the Southern District of Ohio's Eastern Division against top officials of the Ohio State Employment Relations Board (SERB) for religious discrimination in enforcing the contested statute. Meanwhile, Foundation attorneys aided Katter in filing a related charge with the Equal Employment Opportunity Commission (EEOC) against the NEA union and its affiliates.

"Carol Katter's struggle underscores that Ohio employees still face an uphill battle when objecting to union affiliation on any grounds whatsoever, including religious grounds," stated National Right to Work Foundation Vice President Stefan Gleason. "Until Ohio passes a Right to Work law making union membership and dues payment strictly voluntary, such abuse will inevitably continue virtually unabated."

## Union officials' politics conflict with educator's faith

The federal court complaint spells out that, even though Katter is a lifelong Catholic, she was denied her right to a religious accommodation. Katter believes that she should be allowed to direct her forced dues instead to charity. That way she would not be funding a union hierarchy that supports positions directly in conflict with Catholic doctrine.

Katter's complaint cites that the state's discriminatory statute amounts to an unconstitutional establishment of religion. It seeks a federal injunction prohibiting SERB from further enforcing the law in a discriminatory manner against other state employees.

## Ohio employees of faith suffer persecution

SERB officials can no longer claim ignorance of the problem with the unconstitutional law, as the agency has recently been an incidental party to an earlier investigation and lawsuit by the U.S. Department of Justice and National Right to Work Foundation attorneys involving similar systematic religious discrimination throughout Ohio. (See Nov/Dec 2006 *Foundation Action*, page 3.)

That case resulted in a federal court decree re-affirming that all Ohio State employees who have sincere religious objections to union affiliation – regardless of church affiliation – cannot be forced to associate with and pay dues to a union they find objectionable.

"I'm hoping that this case will set a precedent so anybody from any religion who has these feelings will not be pressured into compromising their convictions," Katter recently told a national news outlet. "I can't *not* do this." ✚

## 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.

# NLRB OKs Firing Workers Who Won't Pay for Union Organizing

*Federal agency thumbs nose at Supreme Court decisions after 17-year delay*

WASHINGTON, DC – Finally forced to rule by court order, the National Labor Relations Board (NLRB) still refused to revisit a controversial Clinton NLRB ruling that authorizes the firing of workers who refuse to pay for organizing more workers into union membership.

The controversial ruling came in a long-languishing case initiated in 1989 by two Wisconsin workers against Teamsters Local 75 in Green Bay with legal help from the National Right to Work Foundation.

Although David and Sherry Pirlott, employees of Schreiber Foods, won part of their case on technical grounds, the NLRB refused to enter a judgment barring union officials from compelling the payment of union dues that are spent for union organizing. Foundation attorneys are pursuing a vigorous appeal.

## Unions spend huge sums on organizing workers

Accordingly, nonunion members in most of the private sector nationwide may be forced as a condition of employment to pay for union organizing drives and to fund highly aggressive “corporate campaigns” intended to bully companies and employees into unionization. Such campaigns often pressure the employer to accept the coercive “card check” unionization scheme, in which union organizers can browbeat employees individually to sign cards that are then counted as “votes” for unionization.

Union officials brag that these coercive expenditures often comprise as much as 60 percent of a union’s budget.

“This is justice delayed, and justice denied,” said Mark Mix, president of the National Right to Work Legal Defense Foundation. “David and Sherry Pirlott have waited nearly two decades only

to be abandoned by the agency supposedly charged with protecting them.”

## Dissenting NLRB member scorns ruling as ‘indefensible’

In a well-reasoned dissent, NLRB Member Peter Schaumber scorned as “indefensible” the NLRB majority’s decision not to reverse the controversial Clinton-NLRB ruling.

Schaumber also noted that the NLRB was renegeing on its earlier representations to the U.S. Supreme Court. In recent years, the agency had argued against U.S. Supreme Court review of its Clinton-era *Meijer* decision on the grounds that the NLRB would have the opportunity to reevaluate its position in *Schreiber Foods*. By now refusing to follow through and either reaffirm or overturn *Meijer* (a case also brought by Foundation attorneys), Schaumber noted, the NLRB “effectively insulates the *Meijer* decision from appellate and Supreme Court review for the foreseeable future.”

“Not only did it take two lawsuits against the agency and over 17 years to extract a ruling, but now the Board has thumbed its nose again at binding U.S. Supreme Court precedents,” stated Mix. “The handling of this case is an embarrassment.”

Under Supreme Court rulings in *Communications Workers v. Beck* and *Ellis v. Railway Clerks*, cases brought by employees represented by Right to Work Foundation attorneys, workers may not be lawfully forced to pay for any union



*After dragging its feet for 17 years, the NLRB Fed Ex-ed out its shoddy ruling under court deadline, narrowly averting being found in contempt.*

activities unrelated to collective bargaining, contract negotiation, or grievance adjustment, such as union organizing, politics, extra-unit litigation, and member-only programs.

## Court order demanding ruling extremely rare

Foundation attorneys persuaded the U.S. Court of Appeals for the D.C. Circuit to order the NLRB to rule in the *Schreiber Foods* case in just the third known *mandamus* order ever issued against the Board since its creation in 1935. The Pirlotts’ case was the oldest of scores of cases in which Right to Work Foundation-assisted employees are trying to reclaim their forced union dues used for non-bargaining activity.

Refusing to let the NLRB off the hook for its ongoing dereliction of duty, Foundation attorneys helped an employee of Colt Manufacturing file yet another *mandamus* petition asking the federal appellate court in Washington, DC, to order the agency to rule in another long-delayed case that has languished at the federal labor board for nearly four years.

In that languishing case, George Gally, a 40-year veteran Colt employee, filed unfair labor practice charges in 2003 challenging the United Autoworker union’s nationwide policy of requiring employees to object annually to receive refunds of forced union dues spent for non-collective bargaining activities such as union politics and lobbying. ⚡

## Tax Season 2007 - Have you thought about your charitable goals?

**As tax season approaches, many Right to Work Foundation donors have indicated they are looking for more ways to make next year's tax bite less severe. There are so many options, and one of them might fit your situation.**

Past issues of *Foundation Action* have laid out several exciting ways for donors to accomplish their goal of helping the Right to Work cause while maximizing the tax efficiency of their charitable giving. By starting early, you can best put a plan into action through careful financial planning that will pay off big time next April.

The National Right to Work Legal Defense Foundation's Planned Giving program provides its supporters with many different options that can be specifically tailored to meet your financial needs and future goals. There are giving tools available that offer several advantages to contributors, such as maximizing income tax deductions, minimizing capital gains taxes, avoiding a hefty estate tax bill, and even providing a life-long income stream.

Among the most common financial vehicles used to make planned gifts to the Foundation are bequests, charitable

gift annuities, or even trusts. Of course, in addition to speaking with our experts on staff at the Foundation, we encourage you to contact your own financial advisor or attorney before you decide which planned giving option is right for you.

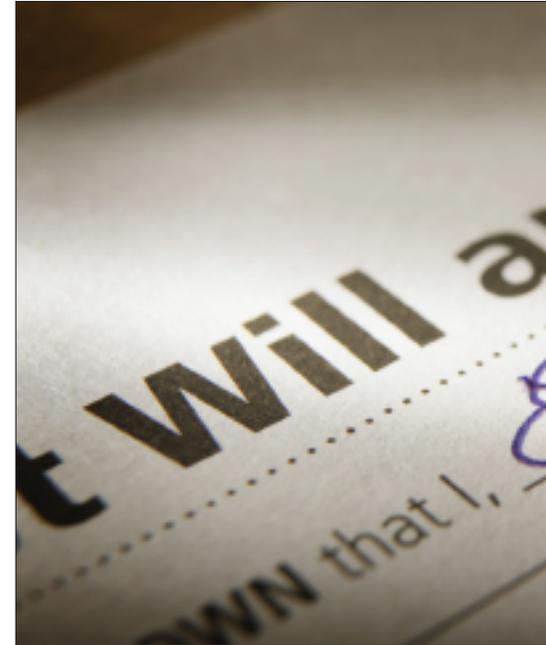
Right to Work supporters share a goal of individual liberty for all and disdain for compulsory unionism, and they are also some of the most caring and generous people you will ever meet. Their generosity makes possible the Foundation's long-term mission to assist union-abused employees and reduce union coercive power through its strategic litigation program.

We have highlighted the Foundation's Legacy Society in past issues of *Foundation Action* and are encouraged with our donors' response. The enthusiasm and interest continues to grow, with the Legacy Society adding six new members in the past few months.

### National Right to Work Foundation Legacy Society

You can become a member of the Legacy Society by making a planned gift of any kind to the Foundation and then letting us know that you have done so. As a member of the Society, you are entitled to benefits such as invitations to private Right to Work events, your name listed on a Legacy Society plaque in the Right to Work offices, and the assurance that you are making a significant commitment to the long-term growth of the Right to Work Foundation and its goals.

If you would like additional information on the Foundation's Legacy Society, please contact Ginny Smith in our planned giving department at 1-800-336-3600, Ext. 3303.



### Reed Larson Endowment Fund

The Board of Trustees of the National Right to Work Foundation has named its endowment fund in honor of Reed Larson, who served as president of the Foundation from 1968 until 2003. This fund is designed to provide ongoing operating income necessary to carry on the Foundation's strategic legal program against the abuses of compulsory unionism.

Any contribution made to the endowment fund is invested in growth and income-producing assets. The income produced each year is then transferred into the Foundation's general operating account and used to fund the advancement of the litigation program – taking on new cases and establishing new precedents.

Any given case taken on by the Foundation is a long term commitment, and it is our hope that the Reed Larson Endowment Fund will help keep the Foundation on stable financial ground

*All gifts should be made to:*

**“National Right to Work  
Legal Defense and  
Education Foundation, Inc.”**

long into the future, ensuring that resources will be available to assist brave employees across the country who stick



out their necks to fight compulsory unionism abuse.

### Other Planned Giving Vehicles

There are many additional charitable giving options available to generous supporters.

Other tax-advantaged giving options available include:

- 1) gifts of cash (a tax deduction in the current year);
- 2) gifts of securities (a tax deduction and no capital gains tax);
- 3) wills and living trusts (a plan for the future);
- 4) gift annuities (a tax deduction in the current year and an income stream for life); and
- 5) pooled income fund (an alternative life income solution).

We hope you will consider a planned gift soon to the National Right to Work Foundation and its future work. While gifts of cash to the Foundation are deeply appreciated, you may find a planned gift can result in even more advantages to you, your family, and the National Right to Work Foundation!

If you have any questions or would like future information on a planned gift to the Right to Work Foundation, please call Ginny Smith at 1-800-336-3600, ext. 3303 or email her at [plannedgiving@nrtw.org](mailto:plannedgiving@nrtw.org). You can find additional information on our website [www.nrtw.org](http://www.nrtw.org). 

### 2007 Tax Relief for IRA Gifts

The Pension Protection Act of 2006-2007 allows gifts from (non-employer-sponsored) IRAs to avoid federal income taxes if...

\*the donor is 70 1/2 or older when the gift is made;

\*the transfer of funds is made directly from the IRA to the Foundation (a "qualifying charity") during 2007; and

\*the gift is given outright and in an amount of \$100,000 or less in 2007, aggregated with other such gifts.

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## National Right to Work Foundation Charitable Gift Annuities

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\*Not available in all states. Minimum gift of \$10,000.

For more information, contact Ginny Smith at (800) 336-3600 ext. 3303, or email her at [plannedgiving@nrtw.org](mailto:plannedgiving@nrtw.org).

Make a gift to the future of the Right to Work movement, and we'll pay you income for life!



#### Current Single Life Payout Rates

Age	Rate
65	6.0%
70	6.5%
74	6.9%
78	7.6%
80	8.0%
84	9.2%
88	10.6%
90+	11.3%

# ESPN/ABC Cameraman Fights Rampant Union Coercion

*Union officials routinely force unionization on daily hires in entertainment industry*

NEW YORK, NY – With help from National Right to Work Foundation attorneys, a television cameraman employed as a “daily hire” by ESPN Television and ABC Television filed federal charges against a major entertainment industry union for trying to bilk him of thousands of dollars in forced union dues and initiation fees.

Donald J. Geist has never been continuously employed by ABC such that he can be legally forced to join a union or pay union dues, but that hasn’t stopped National Association of Broadcast Employees and Technicians (NABET) Local 41 union bosses from their intimidation.

## Union bullies to cameraman: ‘pay up or be blacklisted’

Ignoring long-standing law, NABET union officials sent Geist multiple threats that he could not work for ABC if he did not join the union, pay a \$1500 “initiation fee,” and then pay an additional \$125 every month in forced dues – despite the fact that he only occasionally did jobs for ABC. When Geist refused to pay, union officials demanded Geist’s intermittent employer ABC fire him and blacklist him from future work.

In response to these illegal threats, Geist sought free legal assistance from



*The Foundation has assisted celebrities like Barry Williams of the Brady Bunch (left) and political commentator William F. Buckley Jr. (right) challenge scofflaw entertainment union officials.*



*NABET-CWA union boss Larry Cohen may act like a common man, but his union exploits workers in a shameful way.*

“Because much of employment is transient and short term in the entertainment industry, union officials have come up with a number of creative (but illegal) schemes to force these individuals into union ranks,” said Raymond LaJeunesse, vice president and legal director of the National Right to Work Foundation.

## Union officials have ‘show business’ by the throat

“This case highlights the reality that violation of rights is standard operating procedure for entertainment industry unions. But because these violations have long been unchecked, union bosses call the shots in the industry.”

At deadline for *Foundation Action*, the NLRB Regional Office proposed a settlement that Geist and the union have accepted.

Although the contract NABET union officials are trying to force on Geist is illegal on its face, such contracts are commonplace in the entertainment industry, because the vast majority of producers, as well as casting and talent agents, fear that objecting to union officials could cause their productions to be shut down or cause them to be cut off from access to talent and support personnel.

In the past, the Foundation has represented entertainment industry figures such as actor Barry Williams (of *Brady Bunch* fame), conservative commentator William F. Buckley Jr., and actress Naomi Marquez, who Foundation attorneys represented in the U.S. Supreme Court case *Marquez v. Screen Actors Guild*. ✚

the Foundation and filed the unfair labor practice charges at the National Labor Relations Board (NLRB).

## Union officials stake claim to compulsory dues by fiat

The NLRB charge points out that the contract that NABET union officials reached with ABC is illegal on its face because it requires employees to pay forced dues after only 20 non-continuous days of employment in any year or 30 days within two years. Under federal law, an employee must be continuously employed for 30 days before he can be forced to pay any union dues or fees.

The NLRB charge also pointed out that even if Geist could have been subjected to a forced unionism contract clause, union officials didn’t follow the basic protections flowing from the Foundation-won *Communications Workers of America v. Beck* case. In *Beck*, the U.S. Supreme Court laid out procedures designed to ensure that employees’ right to object to paying forced union dues used for union political expenditures, lobbying, and organizing is protected.

## Major Breakthrough Possible for Employees Under Forced Unionism

continued from cover

“You want us to consider this case as if the First Amendment rights of nonunion members were not involved,” Justice Anthony Kennedy scolded the WEA union lawyer on two separate occasions.

The High Court’s newest Justice, Samuel Alito, echoed these sentiments, and seemed particularly energized in his skepticism toward the entire notion of presuming that nonunion employees want to support the union’s politics. “Isn’t it overwhelmingly likely,” Justice Alito questioned, “that if nonunion workers were asked to give money to the union to spend on elections, they would say no?”

“I absolutely disagree with you,” West replied, as chuckles and gasps rippled through the packed courtroom.

Justice Antonin Scalia also focused on the root problem, incredulous at the union’s sense of entitlement, “Here is the government acting as a coercer. It’s because of the government that you’re allowed to get this money from these nonunion members.”

### Foundation attorneys take opening to advance cause

Though the *Davenport* case is largely defensive in nature, Foundation attorneys were able to find an opportunity to “move the ball” dramatically forward, seeking a precedent that would reverse the burden union officials have placed on nonunion employees to “object” repeatedly before having certain forced dues returned to them.

This opt-out requirement arose from union bosses’ misapplication of a Supreme Court ruling handed down 45 years ago in *Machinists v. Street*.

Although finding that the workers had a right to withhold forced dues for politics, incredibly the *Street* court said

that “dissent is not to be presumed.” For decades, these six words have been exploited by union bosses to place extraordinary burdens on workers, especially nonmembers. In fact, it was these words that the Washington Supreme Court used to justify its perversion of the First Amendment.

But the *Street* case involved union members, not only nonmembers. That’s why Foundation attorneys asked the High Court to clarify in its *Davenport* ruling that becoming or remaining a nonunion member is, in itself, sufficient to show “dissent” to paying union dues or fees.

This simple clarification would prohibit union officials from automatically seizing forced dues from the paychecks of nonmembers for politics and other activities. Where there is no fundamental Right to Work law protection, nonmember employees could only be forced to pay for the cost of bargaining, and union officials would have to get permission before charging them a dime more.

### Optimism high despite government lawyer’s performance

Unfortunately, the Bush administration attorney representing the U.S. Department of Labor obtained some of the oral argument time and undercut this most critical aspect of the *Davenport* case. When asked a leading question by Justice Samuel Alito, one of the Justices who appeared especially focused on Foundation attorneys’ arguments, the administration’s lawyer surprisingly adopted the union lawyers’ arguments.

Justice Alito asked, “Why should the First Amendment permit anything other than an opt-in scheme?” In response, however, the Solicitor General argued that the Constitution does not



**Gary Davenport, his wife Carrie, and their three young children traveled from Seattle, Washington, to observe oral arguments in Gary’s groundbreaking case.**

prohibit Big Labor’s daunting opt-out procedures.

Despite this disappointing development, Foundation attorneys think it possible that the High Court may clarify its 1961 ruling in *Street* as requested, and hand the Right to Work movement a major breakthrough.

“This simple clarification – that ‘no’ indeed means ‘no’ – would sweep away burdensome union objection procedures, and roughly one million nonunion workers across America would be entitled to an automatic reduction in their forced dues by several hundred dollars,” stated Mix.

### Lead Plaintiff and Foundation president brief media

Flying to the nation’s capital from the Seattle, Washington area, lead plaintiff Gary Davenport, his wife, and three

see **DAVENPORT** page 8

## Davenport

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young children, joined Mix and other Foundation representatives after the oral argument to address droves of reporters outside the High Court building.

Speaking confidently, Davenport spoke about why he initiated the case and why he felt adamant enough about the injustice he faced to pursue the case all the way to the Supreme Court: “In short, they want us to pay up or be fired. The State Supreme Court ruling is an outrage, and it cannot stand. Because it’s not fair – and it’s certainly not American – to force anyone to pay for politics he or she opposes,” he stated.

Additionally, Cindy Omlin, Executive Director of Northwest Professional Educators, was on hand in support of Davenport and the Right to Work Foundation. A long time opponent of compulsory unionism, Omlin spoke about finding a meaningful solution to related abuses in Washington state.

“Washington state’s paycheck protection law has not limited the ill effects of compulsory unionism – such as coerced dues for politics as well as intimidation, harassment, and ostracism for those who do not share the union’s point of view,” stated Omlin. “The solution is passage of a state Right to Work law that would ban forced dues.”

The Supreme Court post-argument media event resulted in wide media coverage in virtually all major national newspapers and numerous other outlets, including Fox News Channel.

Washington State Attorney General Rob McKenna also joined the appeal, representing the state, in its related case against the union. A ruling in the pivotal *Davenport v. WEA* case is expected by June 2006. 

For the latest breaking news about the case, click on [www.nrtw.org/davenport](http://www.nrtw.org/davenport)



### Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter:

On January 10th, I was privileged to spend the morning at the U.S. Supreme Court attending the oral arguments in your Right to Work Foundation’s *Davenport v. Washington Education Association* (WEA) union case (cover story).

In the opinion of many of the Foundation’s staff attorneys, the tenor of questioning of the Justices was the most pro-employee we have ever witnessed in any of our Supreme Court cases over the years.

Justice Antonin Scalia and others harped on the fact that the government is acting as the “coercer” when it comes to compulsory unionism, and that such circumstances raise grave First Amendment questions.

At one point during questioning, Justice Samuel Alito strongly questioned the union lawyer’s position and seemed incredulous at any argument that the Constitution permits union officials to automatically seize nonmembers’ money for politics.

Without your help, this battle at the Supreme Court could never have been turned into a positive opportunity to advance the Right to Work movement. If the court goes the additional step the teachers and their Foundation attorneys have asked, the *Davenport* case will help prevent seizures of hundreds of millions of dollars annually in forced dues for politics from nonunion workers.

And after the hearing, it was humbling to stand on the steps of the Supreme Court with Right to Work Foundation-represented lead plaintiff Gary Davenport to brief newspaper and TV reporters.

Being at the court reminded me that, if the Foundation wasn’t standing up for individual employees, it is likely that nobody would. That is why I’m so thankful for your continued support of our vital work.

Your investment makes these great opportunities possible.

Sincerely,

Mark Mix