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Trump Administration Files Brief Supporting Foundation-Backed Supreme Court Case

Briefing continues in *Janus v. AFSCME* case challenging forced union fees

WASHINGTON, DC – Late last September, the United States Supreme Court announced it would hear *Janus v. AFSCME*, a National Right to Work Legal Defense Foundation-backed case seeking to end mandatory union fees for every public employee in America. Even in a Supreme Court term with many high-profile cases, court observers are calling the case a potential blockbuster.

Final briefing began in November when Janus' attorneys from the National Right to Work Foundation and Liberty Justice Center filed their initial merits brief in the Supreme Court case. The brief lays out the argument for a ruling that the First Amendment protects public workers from being required to make payments to union officials as a condition of working for their own government.

In the National Right to Work Foundation-won cases *Knox v. SEIU* (2012) and *Harris v. Quinn* (2014), the Supreme Court made clear that mandatory union payments invoke the highest level of First Amendment protection. The opening brief in *Janus* asks the Supreme Court to apply this heightened scrutiny to mandatory union payments that Janus is currently forced to pay.

"Forced union fees remain the largest regime of compelled speech in the nation," said Mark Mix, President of the National Right to Work Foundation. "If the High



The Trump Administration has filed an amicus brief with the U.S. Supreme Court in support of Mark Janus' First Amendment challenge to forced union dues.

Court rules in Janus' favor, over 5 million public school teachers, firefighters, police officers and other government employees who currently are forced to pay money to union officials just to keep their jobs would be free to decide individually whether or not to make voluntary union payments."

Federal Government Joins First Amendment Challenge to Forced Dues

In December, more than twenty amicus briefs were filed in support of Janus' position that mandatory union payments violate his First Amendment rights. These briefs were filed by a wide variety of state attorneys general, policy groups and individuals, including the past president of the Vermont American Federation of Teachers union, who now supports Right to Work, and

several groups of public employees across the nation currently subject to forced fees.

Of particular interest among the vast amici support was a brief filed in support of Janus by Noel

See *Solicitor General's Brief* page 7

IN THIS ISSUE

- 2 Puerto Rico Utility Worker's First Amendment Lawsuit Challenges Forced Dues
- 3 Foundation Cases Challenge Policies Trapping Workers in Forced Unionism
- 4 Lawsuit: Union Bosses Illegally Had Flight Attendant Fired for Expressing Religious Beliefs
- 5 A Legacy of Freedom
- 6 Hospital Employees Ask NLRB to Overturn Unwanted Forced SEIU Representation

Puerto Rico Utility Worker's First Amendment Lawsuit Challenges Forced Dues

Lawsuit: Union bosses are ignoring decades of legal protections against forced dues for politics

SAN JUAN, PR – Utilizing free legal representation of National Right to Work Legal Defense Foundation staff attorneys, a Puerto Rican Aqueduct and Sewer Authority (PRASA) employee in San Juan, Puerto Rico has filed a lawsuit in federal court challenging the constitutionality of public sector union officials' forced-dues powers.

The case argues that Puerto Rico's labor laws requiring the employee to join the union and pay union dues as a condition of government employment violate his First Amendment rights. Reynaldo Cruz is a PRASA plant operator who has been forced to pay union dues despite his attempt to exercise his right to resign from the Unión Independiente Auténtica (UIA) last year.



Foundation attorneys filed a lawsuit against the government and union officials to protect Reynaldo Cruz's First Amendment rights.

the portion of forced dues that is used for UIA's political and ideological activities. Cruz cited his First Amendment rights under the National Right to Work Legal Defense Foundation-won Supreme Court case *Chicago Teachers Union v. Hudson*, including the right to pay reduced dues.

UIA officials responded by rejecting his request. They informed Cruz that if he wanted to opt out of union membership and forced dues, he had only one of two options.

According to UIA brass, he must end his employment with PRASA or seek a position outside their monopoly bargaining unit. Union officials and PRASA continued deducting full forced union dues from Cruz's paycheck as a condition of employment.

In April 2017, Cruz's Foundation-provided attorney sent union and PRASA officials a notice demanding back pay for dues illegally taken as well as immediate cessation of all dues deductions from Cruz's paycheck. UIA union officials and PRASA administrators denied Cruz's Foundation attorney's requests. They cited several Commonwealth of Puerto Rico statutes.

Consequently, Cruz is suing UIA officials and PRASA administrators for infringing upon his rights recognized by the Foundation-won Supreme Court precedent. Because Cruz is challenging the constitutionality of PR statutes, he has also named the Governor of Puerto Rico in his suit.

"Every American worker, whether in the 50 states or in Puerto Rico, should have Right to Work protections that ensure that union membership and dues payment are strictly voluntary," said Patrick Semmens, Vice President of the National Right to Work Foundation.

In addition to asking the union to respect his rights under the *Hudson* precedent, Cruz is also asking the court to rule that forced payment of any union dues or fees violates his First Amendment rights. That issue is currently before the U.S. Supreme Court in the Foundation-backed *Janus v. AFSCME* case, filed for Illinois public sector employee Mark Janus, with a decision likely in June.

Cruz's case joins six other ongoing Foundation-backed cases challenging mandatory union payments for government employees as a violation of the First Amendment.

Union Officials Demand Forced Dues as a Job Requirement

In late 2016, Cruz sent letters to UIA union officials and PRASA resigning his union membership and objecting to the payment of

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.

Foundation Cases Challenge Policies Trapping Workers in Forced Unionism

Obama Labor Board regularly blocked workers seeking to vote out unwanted unions

PHOENIX, AZ - Tim Maguire is an employee of Calportland Company in Arizona. He and his coworkers want a vote to remove the Teamsters union from his workplace, but like many workers in his situation, union officials are using a biased National Labor Relations Board (NLRB) policy to block the workers of Calportland from even holding a vote to oust the unwanted union.

Now Maguire, with free legal aid from the National Right to Work Legal Defense Foundation, has filed a petition requesting that the new Trump NLRB reconsider the Labor Board's "blocking charge" policy. That policy has been used repeatedly by union officials to stifle workers' rights under the National Labor Relations Act (NLRA) to remove unions that are not supported by a majority of workers. Under the Obama NLRB, such "blocking charges" were frequently used to block NLRB-run decertification votes.

Maguire's case highlights the problem of blocking charges which trap workers under union monopoly representation they oppose, often for months or even years. Fed up with Teamsters officials' so-called "representation," Maguire collected signatures from a majority of workers at his workplace, far more than the 30% needed under the NLRA to trigger a secret-ballot election vote to remove the union.

However, instead of holding the vote, the NLRB blocked the workers' request citing unsupported Teamsters officials' "blocking charges" filed against Maguire's employer. Even though the Teamsters' NLRB charges cite no proof, the NLRB Regional Director postponed the decertification election indefinitely, despite holding no formal hearings to determine the veracity of the Teamsters' claims.

Now Maguire and his coworkers remain under union monopoly "representation" that a majority



Tim Maguire turned to the National Right to Work Foundation after being prevented from voting to rid his workplace of an unwanted union.

have petitioned to remove. Similar situations have played out repeatedly in recent years as union lawyers realized that the Obama NLRB would use almost any excuse to block worker decertification votes.

"For almost a decade, the Obama NLRB stacked the deck in favor of union bosses over the rights of workers who don't want to associate with a union," said National Right to Work Legal Defense Foundation VP and Legal Director Ray LaJeunesse, Jr. "The opaque blocking charge policy shows how Big Labor partisans in Washington, D.C. have twisted the law to prevent employees from exercising their rights under the National Labor Relations Act to free themselves from forced unionism."

The Obama NLRB's radical use of the blocking charge policy is hardly the only way workers are regularly stopped from holding a vote to remove an unwanted union. Even when workers, frequently with

free Foundation legal aid, clear the blocking charges, they often then are prevented from holding a vote due to various bureaucratically concocted "election bars" that limit decertification votes to certain brief "windows."

NLRB "Election Bars" Trap Workers in Forced Dues

Elizabeth Chase, an employee of Apple Bus Company near Anchorage, AK, learned about these policies the hard way when she sought to decertify Teamsters Local 559 union officials as the monopoly bargaining agents for her and her coworkers. Although Chase's petition was signed by the majority of workers in the bargaining unit, an NLRB Regional Director blocked Chase and her coworkers from holding a vote to remove the union, citing the so-called "successor bar" doctrine, which was reinstituted by the Obama Labor Board in 2011.

The NLRA is supposedly designed to allow employees to vote to see whether a majority do or do not support unionization. There is no mention of a successor bar anywhere in the act itself. Yet, pro-forced unionism Labor Board members from the Clinton and Obama Administrations have used the successor bar doctrine to prevent workers from removing unwanted unions after changes in ownership of employers.

Thus, because Chase had previously worked for First Student until the school district where she works replaced First Student with Apple Bus, Chase and her coworkers were blocked from voting to remove a union a majority had petitioned to remove. Now Chase will have to wait until the successor bar expires one year after bargaining with the new owner before she can submit another petition.

See Foundation Attorneys page 7

Lawsuit: Union Bosses Illegally Had Flight Attendant Fired for Expressing Religious Beliefs

Southwest employee terminated after she questioned forced dues and union political expenditures

DALLAS, TX - With free legal aid from the National Right to Work Legal Defense Foundation, a terminated Southwest Airlines flight attendant has sued her ex-employer and union officials after being fired for voicing her religious objections to union activities, supporting a National Right to Work law to make union dues voluntary and questioning union boss leadership and use of union dues.

Foundation staff attorneys filed the suit for veteran Southwest flight attendant Charlene Carter against Transport Workers Union of America (TWU) Local 556 and Southwest Airlines. They also filed Equal Employment Opportunity Commission (EEOC) employment religious discrimination charges for her against the two parties.

Carter is a Christian who believes her faith requires that she spread her pro-life message. In 2013 she exercised her right to resign her union membership. Being legally obligated to pay forced union dues as a condition of employment, she also objected to paying union dues for causes that violate her conscience.

Union Dues Spent on Divisive Political Causes

After resigning membership in 2013, she messaged Southwest and union officials her concerns regarding forced dues spending. She was not notified before 2017 by union officials or her employer that such contacts violated the union contract. Carter's concerns continued in January 2017 when she found out that her union officials were using union dues to attend a "March on Washington" where members demonstrated for many pro-abortion causes that she opposes, such as funding of Planned Parenthood.

Carter posted her grievances in various Facebook groups, on her own Facebook page, and sent personal messages to the local union president. Frustrated with a lack of response, Carter sent the union president an email supporting a National Right to Work bill that would free her from subsidizing an organization that routinely dismisses her requests and acts contrary to her beliefs.

Firing Followed National Right to Work Legislation Advocacy

Only six days after sending the union president that email, Carter was called in by Southwest for a meeting about her Facebook activity. Southwest presented Carter screen shots of her pro-life postings and informed her that the union president claimed to be harassed by the messages. Southwest bosses questioned why she sent these messages. Carter explained that the union was spending her forced dues money to oppose her deeply held religious beliefs.

After this meeting, Carter was fired from the job she had held for two decades. Based on the union boss' claims, Southwest said she had violated its policies because her message was "highly offensive in nature."

As Carter's legal filings document, Southwest and TWU officials' explanation of her sudden termination, despite an exemplary employment record and without prior discipline, lacks any credibility. During a five year recall dispute over the TWU Local 556 executive board, supporters of the current union head routinely encouraged violence, used vulgarities, and even sent death threats to fellow Southwest employees and union members. Yet that offensive conduct has not



Charlene Carter turned to Foundation attorneys after being fired for voicing her religious beliefs and supporting Right to Work legislation.

cost any of those union militants their job, apparently because they supported the union brass and did not question the injustice of union forced dues powers.

Now Carter wants Southwest bosses and union officials to face justice for their actions. Her federal lawsuit for illegal retaliation will likely be argued in federal district court in Texas this year. Meanwhile, the EEOC is investigating her charges against the union and company for religious discrimination.

"Union bosses cannot stand rank-and-file employees questioning why their mandatory union dues are not voluntary and how they're being spent," said Mark Mix, Foundation President. "That's why, when Carter began opposing the union's political objectives and advocating for a National Right to Work law so her money wouldn't go to causes that violate her religious beliefs, TWU bosses quickly moved to have her fired."✚

A Legacy of Freedom

Celebrating 50 Years of Combatting Forced Unionism

2018 is the 50th Anniversary of the founding of the National Right to Work Legal Defense Foundation -- and thanks to the generosity of Foundation supporters, it may also be a landmark year in the fight to free workers from compulsory unionism.

Since 1968, the Foundation has been the only national organization solely devoted to advancing the cause of individual liberty in the workplace by providing free legal aid to workers victimized by or threatened with compulsory unionism.

Our supporters make this critical work possible, and we are so thankful for their investment. You are a huge part of our success, which this year may include a U.S. Supreme Court ruling freeing every public employee in America from forced union dues!

As part of the Foundation's 50th Anniversary, we hope you will consider a special planned gift through your will or trust instrument to help your Foundation build on its 50-year legacy of success.

How do you make a bequest to the Foundation?

You can make the Foundation a beneficiary of a specific amount from your estate or of a residual bequest. A residual bequest comes to the Foundation after your estate expenses are paid and specific bequests are distributed.

Including the National Right to Work Foundation in your estate plans can be as simple as adding a codicil to an existing will or trust instrument you already have in place. (All you do is add to your will or trust instrument the sample language found on this page.) All gifts to the Foundation are tax-deductible to you and your family.

Sample Language for a Gift in Your Will or Trust

I give, devise and bequeath to National Right to Work Legal Defense and Education Foundation, Inc., 8001 Braddock Road, Springfield, VA 22160, for its general purposes:

- a. The sum of \$_____;* or
- b. Name a particular investment or piece of property with legal description, custodian, etc., as applicable, or*
- c. ____ percent of the rest, residue, and remainder of my estate, including property over which I have a power of appointment; or*
- d. All the rest, residue and remainder of my estate, including property over which I have a power of appointment.*

If you have any questions, or need further information, please contact Ginny Smith, Director of Strategic Programs, at 1-800-336-3600.

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

Hospital Employees Ask NLRB to Overturn Unwanted Forced SEIU Representation

President Trump's NLRB has chance to end outrageous 'accretion policy'

LEHIGH VALLEY, PA – With free legal assistance from National Right to Work Legal Defense Foundation staff attorneys, a group of Pennsylvania hospital employees filed a motion with the National Labor Relations Board (NLRB) in Washington, D.C. seeking to intervene in a case to appeal a decision that forces them to accept Service Employees International Union's (SEIU) "representation" against their will. The workers rejected union organizing efforts, only to have a union-aligned NLRB regional official force them under an SEIU forced-dues contract at the request of union officials.

The workers and their 150-plus coworkers at Lehigh Valley Hospital-Schuylkill East were never given a choice over whether or not to be forced into SEIU monopoly bargaining representation when the NLRB Regional Director issued an order adding their workplace to a unionized bargaining unit at the nearby Lehigh Valley Hospital-Schuylkill South.

Hospital Workers Reject Union Representation

The so-called "accretion order" was issued after employees at Schuylkill East had completely rejected SEIU officials' attempts to unionize their workplace. As detailed in the employees' NLRB filings, in the year prior to the NLRB Regional Director's order, the SEIU tried to organize the Schuylkill East facility, but was repeatedly rebuffed.

SEIU organizers never even filed a petition for a vote over unionization, which would have merely required the signatures of 30% of the workers they were seeking to unionize. Moreover, neither SEIU organizers nor NLRB officials have ever produced any evidence that a majority of Schuylkill East employees want



Now that the NLRB has two new Trump-appointed members (pictured), Foundation staff attorneys are seeking to end many Obama-era policies that limited the rights of workers who do not want to associate with a union.

union representation.

As the workers' legal documents indicate, several hospital employees experienced unwelcomed and unwanted harassment from union officials. "They stood in my doorway despite my attempts to get them off my property," said one respiratory therapist.

Another worker had left Schuylkill South to get away from the union and its repeated strikes: "I left South at some cost to move to a non-union position at East," he said in the declaration to the NLRB. "I feel that the employees at East have very good working conditions, and had no need for any union representation."

Partisan NLRB Official Forces Workers into Union

Despite workers rejecting the SEIU's organizing drive, the SEIU asked the NLRB Regional Director to issue an order adding the Schuylkill East employees to

the existing monopoly bargaining unit. In October 2017, Region 4 Director Dennis Walsh ordered that Schuylkill East workers should be forced into the slightly larger Schuylkill South monopoly bargaining unit, citing the NLRB's accretion policy.

"This case demonstrates how the National Labor Relations Act, which is ostensibly about the rights of employees, has been weaponized against independent workers who wish to remain free of union bosses' so-called representation," said Patrick Semmens, Vice President of the National Right to Work Foundation. "These employees successfully opposed an SEIU organizing campaign at their workplace only to have a union partisan at the NLRB force the union on them without a vote or any showing of interest."

Walsh, a former NLRB member, has a long history of favoring union bosses over the rights of employ-

See Workers Oppose SEIU page 8

Solicitor General's Brief Opposes Forced Dues

continued from page 1

Francisco, the Solicitor General of the United States. The Solicitor General's opinion is considered especially influential in winning Supreme Court rulings, which is why the Solicitor is often referred to as the Court's "10th Justice."

The Solicitor General's brief represents the official position of the federal government. It frequently indicates that the government will request time during oral arguments to present its case. The Trump Administration's support of Janus represents a reversal from Obama's Solicitor General, who backed

union boss forced dues when the issue came before the Court in 2016, which split 4-4 following the death of Justice Antonin Scalia.

"We welcome the support of the Solicitor General for Mark Janus. By backing voluntary union dues, the Trump Administration stands with the vast majority of Americans who agree that it is wrong to force a worker to pay union dues as a condition of employment," added Mix.

A decision in *Janus* is expected before the current Supreme Court term concludes in June. 🇺🇸

Foundation Attorneys Challenge NLRB Policy Trapping Workers in Unions They Don't Support

continued from page 3

Once a new Trump Board is fully in place, Foundation attorneys will look for a case to bring to it arguing that the so-called "successor bar" conflicts with precedents from the Sixth and Seventh Circuit U.S. Appeals Courts and the U.S. Supreme Court. These precedents hold that a union's presumption of majority support can be overcome by proof that a majority of employees do not support the union, as happened in Chase's case.



Workers Petition Trump Labor Board to End Policies Blocking Decertification

In addition to the successor bar, past NLRB bureaucrats have created other bars to decertification, including after a union is initially certified and after a union contract is ratified that, combined, can block workers from removing an unwanted union for years. Further, because the successor bar can be triggered at any time, workers could actually be blocked indefinitely from

holding a vote to remove a union that doesn't have majority support. This can occur despite the fact that workers, if a majority ever supported the union, may have only supported unionization for dealing with the previous employer.

The injustice Elizabeth Chase and her coworkers suffered is compounded by the fact that Alaska has not yet enacted Right to Work protections, making union dues and fees voluntary. Thus, the NLRB Regional Director's decision allows Teamsters officials to force Chase and her coworkers to pay forced union dues despite their overwhelming opposition to the union.

"It is directly contrary to the stated goal of federal labor law for workers to be trapped under union monopoly representation when a majority of them are on record seeking to have that union removed," said Mr. LaJeunesse. "The new Trump NLRB should move quickly to end these various arbitrary barriers to workers who seek a decertification vote." 🇺🇸

National Right to Work in the News

Since the Supreme Court granted the landmark case *Janus v. AFSCME* in September, hundreds of news outlets have covered the Foundation-backed case including:

Associated Press
The New York Times
The Wall Street Journal
The Washington Examiner
The Washington Post
USA Today
Chicago Tribune
Los Angeles Times
Reuters
NBC News
ABC News
CNN
CNN International
Fox News
The Washington Free Beacon
The Daily Caller
Watchdog.org
One News Now
The Vicki McKenna Show
The Illinois News Network
SCOTUS Blog
Red Alert Politics
Law360
Lockport Journal
Sacramento Bee
Daily Labor Report
Bloomberg News
Inside Sources
The Weekly Standard
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Alton Daily News
Lincoln Courier
Education Week
The Philly Inquirer
National Public Radio Illinois
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AM 620 The Pulse Morning Show
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Budget & Tax News
Crown City News
Westlaw
Harrison Daily Times
Madison-St. Clair Record
PBS NewsHour
Law.com
Crain's Chicago Business
State Journal-Register

Workers Oppose SEIU

continued from page 6

ees who oppose unionization. Indeed, the NLRB once took the extraordinary step of suspending Walsh for a month without pay from his position as Regional Director following an Inspector General's investigation.

The investigation found that Walsh mislead NLRB ethics officers about his relationship with a pro-union scholarship fund and that Walsh used his position with the Labor Board to solicit contributions to a fund from labor unions who frequently have cases before the NLRB and himself. Not surprisingly, the SEIU was one of the unions that made payments to Walsh's fund.

Trump NLRB to Review Ruling Forcing Workers Under SEIU

Fortunately, Walsh's order is not the last word on the matter, and it can be appealed to the full Labor Board in Washington, D.C. With their freedoms and rights at stake, the Foundation-assisted employees have asked that they be made a full party to the case as they seek to challenge the accretion order, which imposes forced unionization on them against their will. In addition to seeking to rid themselves of the unwanted SEIU, the employees also ask the new Trump NLRB to revisit the accretion doctrine.

"Like so many pro-forced-unionism NLRB policies, the 'accretion doctrine' is not mandated by the National Labor Relations Act but is the creation of Board bureaucrats seeking to further the interests of union organizers," observed Semmens. "This case gives the new Trump NLRB the opportunity overturn this outrageous doctrine that is being used to trap workers in a union they never asked for and had successfully opposed." ✎



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Now more than ever, your National Right to Work Legal Defense Foundation is at the frontlines of the fight to take down Big Labor's forced-unionism powers.

After eight years fighting back against the Obama Administration's bureaucratic assault against worker freedom, Foundation staff attorneys are now in a position to win new protections for independent-minded workers.

Foundation staff attorneys laid the groundwork in the courts and administrative agencies these last few years, knowing that the tides could turn once the White House changed hands.

Now, after the Obama Administration fought our efforts to free workers from Big Labor's grip, the Trump Administration supports our arguments in *Janus v. AFSCME*, the case pending at the U.S. Supreme Court that could end forced dues for every government worker in America.

Meanwhile, while some Obama cronies at the National Labor Relations Board continue to muddy the waters, new Trump appointees are in a position to hear Foundation-supported cases and begin to roll back the Obama Administration's unprecedented payoffs to Big Labor.

These opportunities exist thanks to the generous commitment of the Foundation's supporters and the long-term approach of our strategic litigation program.

Sincerely,

Mark Mix