



# Foundation *Action*

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

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## Lawsuits Successfully Challenge Schemes to Block Workers' *Janus* Rights

*Workers win first two settlements to end unconstitutional forced union dues seizures*

BRAINERD, MN – The fight for public sector workers' First Amendment rights took a huge step forward in the Foundation-won U.S. Supreme Court *Janus v. AFSCME* decision. However, across the country union bosses are attempting to limit when workers can exercise their First Amendment rights under *Janus*, to stop dues seizures through so-called "window period" policies.

In response, Foundation staff attorneys have filed many lawsuits for public employees challenging such schemes, which claim workers can be restricted from exercising their First Amendment rights under *Janus* outside brief union-created window periods. Such policies trap workers in forced dues against their will, which puts them at odds with the *Janus* ruling that any dues taken without workers' consent violates their constitutional rights.

Two of those important lawsuits have ended in victories halting unions' "window period" policies.

### Minnesota Civil Servant Stops Illegal Forced Union Dues

In 2004, when the City of Brainerd Police Department entered into a monopoly bargaining contract with International Brotherhood of Electrical Workers (IBEW) Local 31, clerk Sandra Anderson was told she must either join the union and pay dues or pay compulsory union fees as a non-member. Faced with being



**Police clerk Sandra Anderson won a settlement against IBEW with help from Foundation staff attorneys, successfully challenging union bosses' scheme to trap her into subsidizing a union.**

forced to fund the union either way, Anderson joined the union, signing a form authorizing the deduction of union dues from her paycheck.

Then, Anderson heard about the *Janus* ruling, argued and won by Foundation staff attorneys at the Supreme Court. Soon after, Anderson emailed an IBEW official and Brainerd representatives demanding that both parties stop collecting dues from her wages in accordance with *Janus*. However, IBEW officials claimed that Anderson could only stop dues payments during either a 10-day window prior to the expiration of the monopoly bargaining contract, or a 10-day window prior to the

anniversary date of her dues deduction authorization.

Anderson came to the Foundation for help in filing a lawsuit challenging the "window period" policy as unconstitutional, because the policy limits when she can exercise her First Amendment rights under *Janus*, and allows IBEW Local 31 union officials to collect union dues without her affirmative consent.

In December 2018, IBEW union officials decided they wanted the case to go away, so they settled. Under the settlement, IBEW has refunded to Anderson all union dues they unconstitutionally collected from her after she notified the City of Brainerd and IBEW Local 31 that she no longer consented to financially supporting the union. IBEW officials have also acknowledged Anderson's request

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## Housekeeper Challenges Labor Board Double Standard Promoting 'Card Check'

**Trump NLRB asked to enforce rule stopping companies from aiding union 'card check' drives**

WASHINGTON, D.C. – After UNITE HERE Local 8 union officials unionized Gladys Bryant's workplace via a "card check" drive, the Seattle housekeeper couldn't help but feel that her rights had been violated.

Union bosses had significant help from Bryant's employer, Embassy Suites, to organize the employees – even a list of workers' names and contact information. And when Bryant had sought to revoke her card asking for the union's representation, a union organizer lied to her and her coworkers about the process, blocking Bryant from exercising her rights.

After the tainted "card check" drive resulted in UNITE HERE Local 8's monopoly bargaining power over her and her colleagues, Bryant decided to challenge the union bosses and her employer over their coercive tactics.

She filed charges with free legal aid from Foundation staff attorneys. A National Labor Relations Board (NLRB) Regional Director dismissed her charges, but a Foundation staff attorney has filed an appeal with the NLRB General Counsel.

**President Barack Obama's NLRB pushed through Big Labor-friendly rules promoting coercive "card check" union organizing drives.**



### 'Card Check' Drive Marked by Misinformation and Double Standards

Bryant had been working at Embassy Suites in Seattle for a month before the company informed her and her colleagues that UNITE HERE Local 8 union officials would be organizing the workplace.

Union officials began conducting a "card check" drive, a coercive tactic that bypasses a secret ballot election. Embassy Suites actively promoted the drive, giving union organizers special access to the hotel to meet and solicit employees. The hotel even provided union bosses with a list of all employees' names, jobs, and contact information to assist the union officials in collecting authorization cards from

employees.

Although Bryant did at first sign a union authorization card, she and many of her colleagues reconsidered. When Bryant asked a union official how to revoke her card, the union official misled her and other employees that they had to appear in person at the union hall to revoke any previously signed cards.

Bryant made an appointment with the union official in an attempt to comply with the unlawful requirement. However, the union official did not show up. As a result, Bryant and her colleagues were unable to revoke their union authorization cards, which were then counted as "votes" toward unionization.

### Foundation Attorney Asks NLRB to Protect Worker Freedom

After Embassy Suites recognized UNITE HERE Local 8's monopoly bargaining "representation" over employees, Bryant sought free legal aid from Foundation staff attorneys to file charges, arguing that the unionization violated the National Labor Relations Act (NLRA).

Bryant's charges allege that Embassy Suites provided UNITE HERE's organizing campaign with more than "ministerial aid." The NLRB has long held that an employer taints employees' efforts to remove a union if it gives the employees more than "ministerial

## 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.



## SCOTUS Asked to Hear Homecare Providers' Case Seeking Return of Seized Union Fees

### *Providers fight to reclaim \$32 million in union fees seized in violation of First Amendment*

WASHINGTON, D.C. – In 2014, the U.S. Supreme Court ruled in the Foundation-won *Harris v. Quinn* case that a scheme imposed by the state of Illinois, in which over 80,000 individual home care providers were unionized by the Service Employees International Union (SEIU) and forced to pay union fees out of the state funding they receive, violated the providers' First Amendment rights.

The ruling should have meant that SEIU union bosses were forced to return the unconstitutionally seized union fees. Instead, five years later the providers are once again at the steps of the Supreme Court.

### **SEIU Union Bosses Keep Illegally Seized Union Fees**

After the 2014 ruling, *Harris* continued as *Riffey v. Rauner*. The case was remanded to the District Court to settle remaining issues, including whether or not the 80,000 providers would receive refunds of the money SEIU officials seized without consent.

In June 2016, the District Court denied a motion for class certification. The ruling allowed the SEIU to keep the over \$32 million in unconstitutional fees confiscated from homecare providers compelled into union ranks, who had not consented to their money being taken for union fees. The Appeals Court upheld the ruling.

In 2018, Foundation staff attorneys successfully petitioned the U.S. Supreme Court to review and reverse the Appeals Court's ruling. The High Court did so the day after it issued the landmark *Janus v. AFSCME* decision, ordering the Appeals Court to reconsider the case in light of the *Janus* ruling, which struck down public sector forced union fees as violating the First Amendment.

In *Janus*, which was argued by



***Susie Watts, a plaintiff in the U.S. Supreme Court Harris decision, is a home care provider for her daughter Libby. The case continues in Riffey, as providers fight for the return of unconstitutionally seized union fees.***

the same National Right to Work Foundation staff attorney who is lead counsel in the *Riffey* case, the Supreme Court clarified that any union fees taken without an individual's informed consent violate the First Amendment. That standard supports the *Riffey* plaintiffs' claim that all providers who had money seized without their consent are entitled to refunds.

### **SCOTUS Asked to Allow Providers to Reclaim Funds Seized in Violation of First Amendment**

On December 6, a three-judge panel of the Appeals Court affirmed its previous ruling that no class can be certified from the over 80,000 providers whose money was seized in violation of their First Amendment rights. The panel based its decision on the ground that each individual homecare provider would have to prove that he or she objected to the

taking of the fees when the seizures occurred.

After the Appeals Court denied Foundation staff attorneys' request to rehear the case with all judges, Foundation staff attorneys filed a petition for certiorari with the Supreme Court, asking it to take the case.

Foundation staff attorneys point out that the *Janus* precedent does not require a worker to prove his or her subjective opposition to forced union fees. Rather, *Janus* held that the First Amendment is violated if union dues or fees are seized without the worker's clear affirmative consent.

"The U.S. Supreme Court ruled that SEIU had illegally confiscated union dues from thousands of Illinois homecare providers, but the ruling challenged by this petition denies those same caregivers the opportunity to reclaim the money that never should have been taken from them by SEIU in the first place," said Ray LaJeunesse, vice president and legal director of the National Right to Work Foundation. "If SEIU's bosses are not required to return the money they seized in violation of homecare providers' constitutional rights, it will only encourage similar behavior from union officials eager to trample the First Amendment to enrich themselves with the money intended for the care of individuals who need it." ✚



**Learn more about *Janus* at [MyJanusRights.org](http://MyJanusRights.org)**

## Foundation Fights to Enforce *Janus* SCOTUS Victory and Halt Big Labor's Coercive Tactics

*Foundation attorneys litigating more than 25 cases for public employees over Janus rights violations*

SANTA FE, NM – Although the U.S. Supreme Court has ruled that forced union fees for public sector workers are unconstitutional, much work remains before civil servants are free from union bosses' coercion.

In the landmark victory in *Janus v. AFSCME* in June 2018, briefed and argued by Foundation staff attorneys, the Supreme Court ruled that charging any government employee union fees as a condition of employment violates the First Amendment. The Court also affirmed that unions may only collect fees when an employee gives clear and affirmative consent.

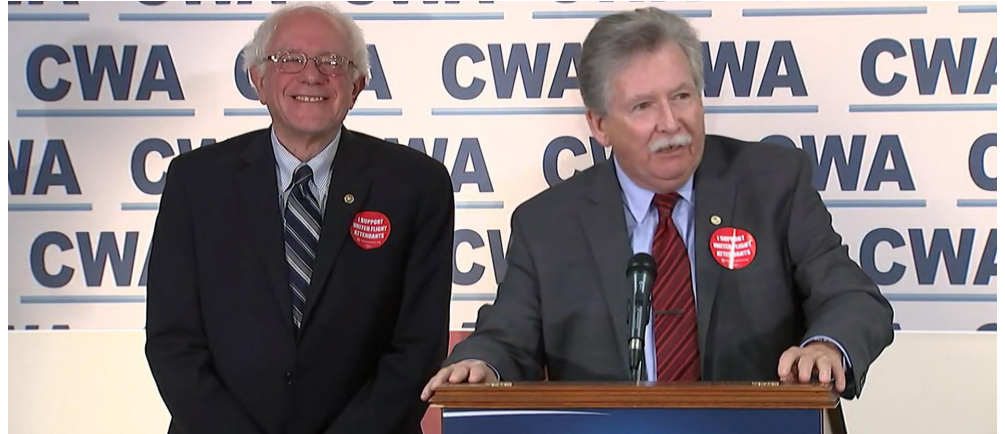
Already, Foundation staff attorneys are litigating more than 25 lawsuits from California to New Jersey to enforce the *Janus* decision, and new requests from public employees for assistance in enforcing their *Janus* rights continue to stream in.

### Civil Servants Fight Union Bosses' 'Window Period' Schemes

Despite the Supreme Court's ruling, union officials seek to maintain their forced-fees coffers by stifling the rights of the workers they claim to represent. Foundation attorneys have filed several class action lawsuits challenging union officials' "window period" schemes, arbitrary windows of time limiting when employees can exercise their First Amendment right to refrain from subsidizing a union.

Two such cases (see page 1) have already settled in favor of the workers challenging union attempts to trap them in forced dues, but in the others union bosses still refuse to back down from their coercive schemes.

In New Mexico, David McCutcheon, an IT technician at New Mexico's Department of Information Technology, was



**CWA union officials, led by top boss Chris Shelton (pictured right with self-declared socialist Senator Bernie Sanders), began seizing full union membership dues from David McCutcheon's paychecks in violation of his *Janus* rights.**

forced to pay union fees as a non-member before *Janus*. After the Foundation's victory, McCutcheon informed Communication Workers of America (CWA) union officials that under the First Amendment they could no longer force him to financially support the union.

Instead, union officials began charging him full union membership dues without his permission. To add insult to injury, union officials told McCutcheon that he could only stop the unauthorized deductions during a two-week "window period" in December.

McCutcheon sought free legal aid from Foundation staff attorneys, who filed a class action lawsuit in federal court. The class action complaint asks that the court strike down the unconstitutional "window period" scheme, and order the union to refund the membership dues and fees seized from McCutcheon and the likely hundreds of other public employees in New Mexico who have been similarly victimized during the past three years.

In two other cases, California teachers are fighting similar "window period" schemes with free aid from Foundation attorneys. Ventura County math professor Michael McCain is challenging the American Federation of Teachers

union-created fifteen day "window period" policy in a class action lawsuit.

Union officials never informed McCain of his First Amendment right to refrain from supporting a union, making it impossible for him to have waived his rights as *Janus* requires. After *Janus*, McCain resigned union membership and made it clear in a letter that he does not consent to dues deductions. His lawsuit asks that the court strike down the "window period" scheme and stop forcing dues from him and potentially hundreds of other public employees.

Los Angeles kindergarten teacher Irene Seager filed another class action lawsuit, this one against United Teachers Los Angeles to challenge a 30-day "window period" scheme. Her lawsuit also challenges a California state law which allows the union to enforce the restrictive policy.

"Union officials have a long history of manipulating 'window period' schemes and other obstacles designed to block individuals from exercising their constitutional rights," said Patrick Semmens, vice president of the National Right to Work Foundation. "Despite what union bosses say, First Amendment



## MA Supreme Court Hears Educators' Challenge to Teacher Union's Coercive Powers

*Union scheme violates teachers' rights by blocking non-members' voice and vote in workplace conditions*

BOSTON, MA – Union officials offered four Massachusetts educators a “choice”: support union partisan politics or lose any voice and vote in their workplace conditions.

Instead of waiving their First Amendment right to refrain from supporting the union, the educators sought free legal aid from the National Right to Work Foundation to challenge union bosses' coercion in court.

Earlier this year, veteran Foundation staff attorney Bruce N. Cameron delivered arguments at the Massachusetts Supreme Judicial Court, challenging as unconstitutional the state law that grants union officials the power of monopoly bargaining privileges which the union uses to compel support for partisan politics.

### Forced Unionism: 'Not What America Is About'

The four plaintiffs have exercised their right to refrain from union membership. Plaintiff Dr. Ben Branch is a finance professor. His colleague and fellow plaintiff, Dr. Curtiss Conner, is a chemistry professor, both at the University of Massachusetts Amherst.

Plaintiff Dr. Andre Melcuk is Director of Departmental Information Technology at the Silvio O. Conte National Center for Polymer Research at the University. Melcuk was born in the Soviet Union and opposes the union based on his dislike of collectivist organizations.

Melcuk compared his experience with the union with growing up in the Soviet Union, and noted that the expectation to “pick up the sign and march in step” with the union's representation and political ideology was eerily similar.

“That's creepy,” he said. “That is not what America is about.”

Plaintiff Deborah Curran is a long-



**Veteran Foundation attorney Bruce N. Cameron argued at the Massachusetts Supreme Court on behalf of four educators challenging coercion from union bosses to join and support a union.**

term teacher in the Hanover Public Schools. The union officials who claim to “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 educators argue that Massachusetts state law violates their First Amendment rights by granting union officials monopoly bargaining privileges, which are then used to gag non-members from having a voice and a vote in their working conditions.

### Educators Ask Court to Declare Union's Coercive Power Unconstitutional

In the June 2018 *Janus* victory, the U.S. Supreme Court declared that forcing any public sector employee to pay union dues or fees violates the First Amendment. The educators' case points out that denying workers

a voice in their workplace, unless they are union members, is another form of compulsion to support a union, and should be ruled a violation of the First Amendment.

“I would like everybody's First Amendment rights to be protected against what I view as this intrusion on their right to free speech,” said Branch. “They're trying to speak for me and they're not speaking for me.”

“These are dedicated educators who are being forced to choose between losing their voice in the workplace or paying tribute to union bosses who clearly do not have their best interests in mind,” said Mark Mix, president of the National Right to Work Foundation. “Although the Foundation-won *Janus* decision upheld public sector workers' First Amendment right to choose whether or not to pay union fees, union officials still seek to twist workers' arms into funding Big Labor's coffers. A clear ruling is needed to uphold these educators' right to refrain from union membership without fear of retaliation or coercion.”

## Housekeeper Challenges Labor Board Double Standard

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aid,” such as providing a list of bargaining unit employees or use of company resources – as Embassy Suites gave union officials.

Foundation staff attorneys argue that the same “ministerial aid” standard must also apply when an employer aids union officials’ efforts to gain monopoly bargaining power over workers.

The Foundation staff attorney representing Bryant asks that the General Counsel issue a complaint on Bryant’s allegations to provide the Board with an opportunity to bring consistency to its “ministerial aid” standard.

Bryant’s charges also argue that UNITE HERE violated the NLRA and fatally tainted its proof of employee support by misinforming employees that they could only revoke authorization cards by going in person to the union hall, blocking workers from exercising their rights. NLRB doctrine holds that, to revoke an authorization

card, an employee must simply sign a document stating he or she does not support union representation.

Bryant and her coworkers had collected enough signatures for a decertification vote to remove the union. However, in a separate case covered in the January/February 2019 **Foundation Action**, the NLRB blocked their petition based on the “card check” recognition.

The block was due to *Lamons Gasket*, a 2011 Obama Board ruling barring decertification for one year after unionization via “card check.” Some Board members have noted in other recent cases that they would be willing to revisit the blocking charge policy in the future.

“This case proves that not only are union bosses willing to manipulate and ignore the rights of the workers they claim they want to ‘represent,’ their coercion often goes unchecked because of double standards in how the NLRB interprets the law,” said National Right to Work Foundation Vice President Ray LaJeunesse.

“What qualifies as ‘ministerial assistance and support’ under the National Labor Relations Act cannot depend on whether the employer is helping outside union organizers impose unionization on workers, or assisting workers in exercising their rights to remove an unwanted union. This case offers the Trump NLRB a chance to stand up for worker freedom and end a double standard that tips the scales in favor of forced unionism.” ✎

**National Right to Work  
Legal Defense Foundation**

**Rated “A” by  
CharityWatch**

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## ‘Window Period’ Schemes Challenged in Lawsuits Nationwide

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to withdraw her union membership, and will not seek or accept union dues from her again unless she affirmatively chooses to become a union member.

### Ohio Union Bosses Back Down from Class Action Lawsuit Challenging Scheme

Shortly after Anderson’s victory, a group of Ohio public sector employees freed themselves and thousands of their colleagues from another “window period” scheme that violated their rights.

Seven Buckeye State civil servants attempted to resign their union membership in American Federation of State, County and Municipal Employees (AFSCME) Ohio Council 8 and stop paying union dues after the *Janus* decision.

However, AFSCME officials continued to deduct dues, citing a union policy restricting revocation of dues deduction to a narrow 15-day window prior to the expiration of a monopoly bargaining contract once every three years.

The workers came to Foundation staff attorneys to file a class action lawsuit challenging the “window period” scheme. Rather than face Foundation attorneys in court, AFSCME Council 8 union officials settled the lawsuit.

Under the settlement agreement, AFSCME Council 8 stopped enforcing the existing policy restricting workers under their “representation” – as many as 30,000 individuals – from exercising their *Janus* rights. Additionally, union officials refunded to the plaintiffs all union dues they unconstitutionally collected after the plaintiffs notified union officials that they no longer

consented to financially supporting the union.

Union officials were also required to identify any other workers whose rights were blocked by the scheme, honor their requests to resign and stop paying union dues, and refund the dues seized from them under the scheme.

“These seven workers bravely challenged the union bosses’ ‘window period’ scheme, and protected not only their rights but also the rights of tens of thousands of their colleagues,” said National Right to Work Foundation President Mark Mix. “Our first-in-the-nation victories enforcing workers’ rights under *Janus* should be precursors of many cases that result in union bosses dropping their illegal restrictions on workers seeking to exercise their rights secured in the Foundation’s *Janus* Supreme Court victory.” ✎

## Appeals Court Affirms Ruling That Union Bosses Violated Michigan's Right to Work Law

### *Teacher's case resulted in first fine against union officials for illegal forced dues requirement*

DETROIT, MI – When union bosses informed teacher Ron Conwell that he must pay union fees or lose his job, he sought free legal aid from Foundation attorneys to challenge the requirement as illegal under Michigan's popular Right to Work protections.

Michigan's Right to Work Law went into effect on March 28, 2013. Contracts or agreements entered into after the law went into effect must respect workers' right to refrain from the payment of any union dues or fees as a condition of employment.

### Worker Halts Union's Illegal Attempt to Extend Forced Fees for Teachers

The Clarkston Education Association (CEA) and Michigan Education Association (MEA) illegally extended the forced-dues clause in their monopoly bargaining agreement with Clarkston Community Schools after the Right to Work Law took effect.

In August 2015, Conwell resigned his union membership. Later that month, union officials informed him that he was still required to pay union fees or be fired.

"It seemed like to me that the union was trying to find some way to take the law that was put into



***When teacher union bosses flouted Michigan's Right to Work Law, Ron Conwell turned to Foundation staff attorneys to enforce his rights.***

place so that I had a right to decide, and then take that decision away from me," Conwell said.

Foundation attorneys brought charges for Conwell to challenge the union bosses' coercion. In 2017, the Michigan Employment Relations Commission (MERC) ruled that CEA and MEA violated the state's Right to Work protections for public employees by illegally extending and enforcing a forced-dues clause. The Commission ordered the unions to stop threatening employees with termination based on the clause.

MERC also held that Clarkston Community Schools officials violated the law by agreeing to union officials' demands for the

illegal extension. MERC fined both the school district and the unions, making the case the first of its kind in which violators of the Right to Work law were fined.

Union lawyers appealed the ruling but were met with defeat, as the Appeals Court affirmed MERC's ruling and fine, upholding workers' Right to Work protections.

The victory demonstrates that the Foundation's legal aid program remains vital to protect independent-minded workers from Big Labor's coercive tactics.

Foundation staff attorneys have litigated more than 100 cases in Michigan since Right to Work legislation was signed into state law in December 2012.

"Michigan workers can celebrate that the decision upholds their right to work without paying forced tribute to union bosses," said Ray LaJeunesse, vice president of the National Right to Work Foundation. "Yet it also shows that workers need to keep fighting against coercion, as Michigan union bosses have repeatedly violated the state's Right to Work laws in their efforts to keep their forced dues money stream flowing. Foundation staff attorneys continue to assist dozens of independent-minded workers in resisting Big Labor's orchestrated campaign to undermine Right to Work in Michigan." ✎

## ❖ TAX SEASON 2019: DON'T FORGET YOUR CHARITABLE GOALS ❖

Tax season is a reminder that with proper planning, Right to Work supporters can maximize the tax efficiency of their charitable giving using some of the options available because the National Right to Work Foundation is a 501(c)(3) charitable organization.

- ❖ Gifts of cash (a tax deduction in the current year);
- ❖ Gifts of securities (a tax deduction and no capital gains tax);
- ❖ Wills and living trusts (a great plan for the future);
- ❖ A tax-free IRA Rollover gift (for those 70 ½ or older);
- ❖ Gift annuities (a tax deduction in the current year and an income stream for life).

For more information, please contact Ginny Smith in our Planned Giving Department at 1-800-336-3600.



## Foundation Fights to Enforce *Janus* Nationwide

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rights cannot be limited to mere days out of the year.”

Foundation attorneys are also litigating other class action lawsuits to reclaim years’ worth of union fees seized without consent before *Janus*. Together, the lawsuits seek refunds totaling more than \$170 million.

## New Hampshire Public Workers Seek Refunds of Forced Fees

New Hampshire state employees Patrick Doughty and Randy Severance filed a class action lawsuit against SEIU Local 1984 to reclaim union fees coerced from them without their consent.

For years, the state forcibly deducted union fees from the two employees’ paychecks at the behest of union officials, even though neither employee was a union member or had agreed to pay union fees. In their lawsuit, the employees seek refunds going back three years, which is the statute of limitations in New Hampshire. The employees are also seeking refunds for all other state workers who were forced to pay union fees against their will.

“For years, New Hampshire union bosses violated the First Amendment rights of the very public employees they claim to represent,” said Semmens. “Just as a bank robber caught red-handed would never be allowed to keep the proceeds of such criminal behavior, union officials must also return the money they’ve pilfered from the paychecks of hundreds of thousands of workers across the country in violation of the Constitution.”



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## Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter:

In high school I was able to avoid taking physics. And avoid it I did. But I do understand the basic principle that nothing moves unless it’s pushed.

That’s why the Foundation has launched a full-scale attack to eliminate union bosses’ abusive powers.

Independent-minded public sector workers across the country celebrated a historic victory in the Foundation-won *Janus v. AFSCME* decision at the U.S. Supreme Court. However, Big Labor has shown time and time again that it won’t simply roll over and respect workers rights.

Instead, union bosses are resorting to tricks, schemes, and even ignoring the High Court’s ruling to cling to their forced-dues powers. That’s why Foundation staff attorneys are litigating class action lawsuits for workers across the country to challenge “window period” schemes, a tactic in which union bosses attempt to limit workers’ First Amendment rights to a narrow window of time.

As you’ll read in this issue of **Foundation Action**, courageous workers in Minnesota and Ohio have successfully halted union bosses’ “window period” schemes.

The fight is far from over, with Foundation staff attorneys litigating more than 25 active cases to defend employees’ rights under *Janus*.

Even as the Foundation enforces *Janus*, Foundation attorneys continue to challenge forced unionism at the National Labor Relations Board – not only by pushing to reverse damage done by the radical Obama Board but also by seeking new protections for independent-minded workers targeted by union bosses.

The generosity of supporters like you has made key victories possible. Your continued support will allow your Foundation to continue to untangle Big Labor’s abusive grip on America’s workers – and ultimately topple the giant of compulsory unionism for good.

Sincerely,

Mark Mix