



Foundation Action

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of the National Right to Work
Legal Defense Foundation, Inc.

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Foundation Asks Supreme Court to Hear *Janus* Case Again, Seeking Return of Forced Fees

Case could set precedent for hundreds of millions of dollars in refunds to Big Labor's victims

WASHINGTON, DC – Mark Janus is returning to the U.S. Supreme Court, this time asking the Justices to hear the continuation of *Janus v. American Federation of State, County, and Municipal Employees (AFSCME), Council 31*. Janus seeks repayment of the thousands of dollars in fees the union took from his paycheck in violation of his First Amendment rights. Another Supreme Court victory for Janus could set a precedent resulting in the return of hundreds of millions of dollars seized by union officials in violation of workers' constitutional rights.

The original *Janus v. AFSCME* was argued successfully before the Supreme Court by veteran National Right to Work Foundation staff attorney William Messenger. In a landmark victory, the Court sided with Janus on June 27, 2018, and declared it illegal to force public employees to subsidize a union as a condition of employment. The Court recognized that compelling public workers to pay fees to a union violates their First Amendment rights.

Illinois Child Support Public Servant Intervenes in Lawsuit with Foundation Aid

As a result of *Janus*, more than five million public sector employees across the country are no longer required to pay union dues or fees to keep their jobs. However, Janus' case continues as he seeks the



Mark Janus' second Foundation-backed appeal to the Supreme Court landed the top spot on Fox News' website. If Janus prevails again, hundreds of millions of dollars in unconstitutional union dues could be returned to public sector employees.

return of the fees that AFSCME seized from his paycheck without his permission from June 27, 2018, to March 23, 2013, representing the two-year statute of limitations from the date his case started in March 2015 through the Supreme Court's 2018 decision in his favor.

The *Janus* case began in February 2015, when then-newly elected Illinois Governor Bruce Rauner issued an executive order prohibiting state agencies from requiring employees who had abstained from formal union membership to pay union fees, based on a Right to Work Foundation U.S. Supreme Court victory in 2014 in another Illinois case. Rauner also filed a federal lawsuit seeking a declaratory judgment that forced union fees violate the First Amendment rights of public workers.

Staff attorneys from the Foundation, in partnership with the Illinois-based Liberty Justice Center, filed a motion for Mark Janus and two other plaintiffs to

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Rhode Island Officers Win Over \$110,000 in Lawsuits Ending Forced-Dues Scheme

Foundation-won settlements also reinstate officers fired after challenging outrageous dues deductions

WESTERLY, RI – Reserve Officers Scott Ferrigno, Darrell Koza, Raymond Morrone, Anthony Falcone and Thomas Cimalore have won favorable settlements in their cases challenging a forced union dues scheme between International Brotherhood of Police Officers (IBPO) Local 503 union bosses and Town of Westerly officials. The officers also won favorable settlements for retaliation claims they brought after publicly challenging the unlawful arrangement.

The lawsuits were filed with free legal aid from the National Right to Work Legal Defense Foundation and the Rhode Island-based Stephen Hopkins Center for Civil Rights. Under the settlements, IBPO and the Town of Westerly agreed to pay almost \$65,000 in refunds of union fees seized from the officers through the illegal scheme and compensation for the officers' other claims. Officers Koza and Ferrigno will also be reinstated as police officers and receive nearly \$48,000 in back pay from the Town for the period after they were terminated.

"The Foundation is proud to stand with Officers Ferrigno, Koza,



> **POLICE OFFICERS SETTLE LAWSUIT WITH TOWN, UNION**
 >> WESTERLY

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IBPO union bosses and Town of Westerly officials thought they could get away with seizing \$5 per hour illegally from five non-union officers. As the result of Foundation-won settlements, all five officers have now had their rights vindicated.

Morrone, Falcone, Cimalore, and all public servants who are targeted with intimidation, misinformation, threats of firing, and other illegal tactics simply to keep dues money flowing into the bank accounts of self-interested union officials," commented National Right to Work President Mark Mix.

According to the lawsuits, IBPO bosses and the Town of Westerly

began seizing \$5 per hour from each of the five officers' hourly pay without authorization in April 2014. IBPO and the Town perpetrated this scheme against the officers even though they were classified as "nonpermanent police officers" outside the so-called "representation" of union bosses.

Lawsuit: IBPO Union Bosses and Town Officials Violated First Amendment Rights

Over the next six months, in an attempt to stop the flow of illegal fees in this "backroom deal," the officers repeatedly sought meetings with Town officials, including the Town of Westerly's payroll department, the Westerly Chief of Police, the Town Manager and the Town Council, only to be rebuffed. According to the lawsuit, the Chief of Police warned the officers they could be "easily replaced" if they sought publicity for their cause.

The Reserve Officers finally managed to present their objections to the Town Council, but it refused to stop the compulsory fees. On October 20, 2014, within a week of

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hearing that the Reserve Officers arranged a meeting with the Town Council to argue their objections to the forced-fee scheme, the chief emailed the Town Manager informing her of his plan to terminate Koza and downgrade reserve officers' priority level for taking on new traffic detail assignments. The five officers contended that this limited the hours they could work and the pay they could earn.

Town Official Assumed Officers Wouldn't Have Money to Pursue Cases

Records disclosed during the litigation revealed that during a November 2014 meeting between the Town Council and other town and union officials to discuss the potential of litigation in this situation, one official opined, "It's going to cost thousands and thousands of dollars . . . They'd have to take this money out of their pockets. I don't think [their attorney] is going to represent them for free." Another official at the time asserted, "If we say no, they're probably going to back down." When the officials considered whether the Reserve Officers would keep working for the Town, one council member commented, "They can always go to McDonald's."

In December 2014, the Town fired Koza, who had never been disciplined by the Town before these events. According to Koza's lawsuit, the Town attempted to justify his termination on the grounds that he had not immediately left his position directing traffic in a busy intersection to move his police cruiser for an officer attempting to drive through a restricted lane. The Town also cited Koza's calling himself a "police officer" rather than a "reserve police officer" in his application for a handgun carry permit. Koza's lawsuit points out that the Town's charter then gave "nonpermanent police officers" like Koza the powers of regular police officers while on duty, and all of



Officer Darrell Koza was fired at the behest of IBPO union bosses after speaking out against the illegal dues scheme. As a result of the Foundation-won settlement, he will be reinstated.

Koza's references in his application called him a "reserve officer," "reserve police officer," and "reserve officer with the Westerly Police Department."

The Town fired Ferrigno in May 2016. According to Ferrigno's lawsuit, the Town alleged that he left a bicycle race detail assignment early. But Ferrigno contended that he actually stayed five minutes later than he was instructed to by his supervisor while waiting for his replacement to arrive. As further evidence that his firing was unconstitutional retaliation, Ferrigno's lawsuit also noted that the officer who arrived late to relieve him was a union official, who was never even disciplined for his lateness.

The five filed a lawsuit in the United States District Court for the District of Rhode Island, arguing that IBPO and Town of Westerly officials had violated their First Amendment rights by forcing them to financially support the union when they were outside its contract. The officers' lawsuit also alleged that Town officials seized union dues without their individual written authorization in violation of Rhode

Island's wage deduction laws. The lawsuit additionally charged that the town retaliated against them when they spoke out publicly about the malfeasance.

Reserve Officers Win Refunds of Seized Dues and Reinstatement

Officers Koza and Ferrigno filed their own complaints in the same court, charging the Town with firing them for exercising their First Amendment rights. All the lawsuits also sought punitive damages.

Ultimately, rather than face the officers and their attorneys at trial, Town and Union officials agreed to settle the cases. The settlements order union officials to compensate the officers almost \$20,000 and Town officials to pay \$45,000 for dues that were seized illegally under the "\$5 per hour" policy and for other damages and claims. The settlements in Koza's and Ferrigno's cases, on top of requiring the Town to reinstate the two officers and pay back wages, require that all references related to the discipline forming the basis of their lawsuits be removed from their personnel records.

The U.S. District Court for the District of Rhode Island later entered a consent judgment in the case which forbids IBPO Local 503 from forcing any constable or reserve officer to pay union dues or fees without his or her affirmative consent.

"The Town and the IBPO could have avoided the years and expense of litigation if they had only listened in 2014 when we first tried to tell them that they cannot just take \$5 per hour from our pay and give it to the Union without our permission," Officer Cimalore said. "After unsuccessfully trying more than a year to resolve the matter, we were forced to go to federal court." ✚



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Military Base Employee Charges Union Bosses with Religious Discrimination

Union officials interrogated employee about her beliefs instead of providing federally-mandated exemption

CLARKSVILLE, TN – Dorothy Frame, a J&J Worldwide Service Employee, works at Fort Campbell, a military installation on the Kentucky-Tennessee border. In July 2019, she sent Laborers Local Union 576 (LIUNA) bosses at her workplace a letter requesting a “religious accommodation of her objection to joining or financially supporting the union.”

In her letter requesting the exemption in accordance with federal law regarding workplace discrimination, Frame explained that, as a Catholic, she opposes the union’s stance on abortion. Instead of providing her with an accommodation in accordance with federal law, LIUNA bosses rejected her request and demanded in a letter the following month that she “provide a theological defense.”

Now, with free legal aid from National Right to Work Legal Defense Foundation staff attorneys, she has filed a charge with the Equal Employment Opportunity Commission (EEOC) on the grounds that LIUNA officials illegally discriminated against her because of her religious beliefs.

EEOC Asked to Investigate Union Boss Religious Discrimination

Frame’s charge notes that under her Catholic faith she believes abortion is “the unjustified destruction of a human life,” a belief that is rooted in “her understanding of Catholic teaching, scripture, and God’s will.” Because of those sincere beliefs and her knowledge that the union “funds and supports abortion,” her charge states that for her “it would be sinful to join or financially support the union.”

Frame had been a LIUNA member for four years before requesting an accommodation. According to the charge, she converted to Catholicism in 2017 and discovered the conflict



Dorothy Frame opposes funding the LIUNA union due to its stance on abortion. Instead of providing her an accommodation, union bosses questioned her religious beliefs.

between her sincerely held religious beliefs and union officials’ position on abortion “shortly before she wrote her accommodation request.”

Although Kentucky and Tennessee both have Right to Work laws which ensure that union membership and financial support are strictly voluntary, Fort Campbell’s status as an “exclusive federal enclave” overrides those state laws. Thus, the monopoly bargaining contract between J&J Worldwide Service and the LIUNA union requires Frame to pay union dues or fees as a condition of employment.

Union Boss Questions Priest’s Letter Supporting Religious Accommodation Request

LIUNA bosses rebuffed Frame’s request in August 2019, sending her a letter in which a union lawyer told Frame she would need to “provide a theological defense” of her beliefs to meet LIUNA union officials’ supposed standard for a “legitimate justification” for her

accommodation request. Frame then provided a letter from her parish priest supporting her religious opposition to abortion, but, according to her charge, “the Union lawyer rejected this evidence based on his supposedly superior religious views.”

Frame’s Foundation-provided attorney also provided evidence to LIUNA officials that abortion violates the teachings of the Catholic Church. But her charge notes that union officials never responded to this additional evidence and continued to take money from her paycheck in violation of her sincere religious beliefs. Her charge alleges this violates her rights under Title VII of the Civil Rights Act of 1964, which prohibits discriminating against an individual based on his or her religious beliefs. If the EEOC finds merit in her charges, Frame could be given a “right to sue” letter, which authorizes her to file a federal lawsuit against LIUNA officials to vindicate her rights.

Foundation staff attorneys regularly aid workers who have a religious objection to supporting a labor union. They recently helped Boston College electrician Ardeshir Ansari secure such an accommodation from his employer and the union, Service Employees’ International Union 32BJ.

“It is outrageous that LIUNA bosses are forcing Ms. Frame to choose between keeping her job and violating her sincere religious beliefs,” commented Raymond LaJeunesse, Vice President and Legal Director of the National Right to Work Foundation. “Although such religious discrimination is a blatant violation of federal law, union boss demands in this case serve as a reminder why no worker in America should be forced to subsidize union activities they oppose, no matter whether their opposition is religious-based or for any other reason.” ✚

University of California Workers Challenge Restrictions on *Janus* Rights

Class-action lawsuit targets state and union for illegally blocking dues revocations

SAN DIEGO, CA – In March, UC San Diego Health Service Desk Analysts Pablo Labarrere and Sam Doroudi filed a federal class-action lawsuit against the University Professional and Technical Employees (UPTE) union and the University of California for seizing dues from their paychecks in violation of their First Amendment rights.

With free legal aid from National Right to Work Legal Defense Foundation staff attorneys, Labarrere and Doroudi contend that the dues seized from them and their colleagues are unconstitutional under the 2018 Foundation-won *Janus v. AFSCME* Supreme Court decision. In *Janus*, the Court ruled that deducting union dues from any public sector worker's paycheck without his or her affirmative and knowing consent breaches the First Amendment of the U.S. Constitution.

The class-action lawsuit names University of California President Janet Napolitano as a defendant for the university system's role in perpetrating this scheme. It also names California Attorney General Xavier Becerra as a defendant for the state's enforcement of the illegal union dues policy.

UPTE Bosses Enforce Phony Restrictions on *Janus* Rights

According to the lawsuit, UC San Diego Health officials made all new employees "believe that it was a condition of employment to either join the union as full members or pay forced fees as non-members" during a mandatory orientation session. New employees were given and told to sign "dues deduction authorization cards" which provided that union officials would continuously collect dues from each employee's paycheck unless a revocation letter was sent in a 30-day window before the annual



Former presidential candidate and self-described socialist Bernie Sanders gained the endorsement of UPTE union bosses, who are saddling employees with arbitrary restrictions on their First Amendment rights.

anniversary of signing the card.

According to the lawsuit, the authorization cards did not explain, as *Janus* requires, that public sector employees "have a First Amendment right not to subsidize the union and its speech" and that signing the card would waive those rights. Labarrere and Doroudi eventually discovered their First Amendment *Janus* rights independently and sent letters to UPTE officials in December 2019 demanding that dues deductions be cut off. UPTE agents rejected both requests and continued to seize dues from Labarrere's and Doroudi's paychecks, ostensibly because they did not submit their requests within the "escape period" created by the union bosses.

The lawsuit contends that UPTE bosses are violating Labarrere's and Doroudi's First Amendment *Janus* rights by continuing to take dues from their paychecks without ever having received their "affirmative authorization and knowing waiver" of those rights. It also argues that the 30-day "escape period" illegally restricts Labarrere and Doroudi in the exercise of their *Janus* rights.

The class-action lawsuit additionally seeks to stop UPTE bosses and the University of California system from enforcing the scheme against any other

workers, and require UPTE officials to return all dues and fees to any employees in the workplace that had their First Amendment rights violated because of the policy.

Workers Continue to Abolish "Escape Periods" With Foundation Legal Aid

Since the *Janus* decision, Foundation staff attorneys have litigated at least 14 cases around the country for thousands of workers whose First Amendment *Janus* rights have been infringed upon with union-created "escape periods." Six of these cases have already been settled favorably for the plaintiff employees, providing relief and refunds for them and hundreds of their coworkers, while eliminating the restrictions for tens of thousands more.

In one of those cases, Michael McCain, a math professor at a community college in Ventura County, California, fought an illegal "escape period" foisted on his workplace by American Federation of Teachers (AFT) union officials, by filing a federal lawsuit in the District Court for the Central District of California. Ultimately, instead of facing Foundation staff attorneys in court, AFT officials settled the case and paid refunds to all workers who had dues seized because of the illegal policy.

"The Supreme Court made it absolutely clear in *Janus* that union officials violate public workers' First Amendment rights when they seize union dues without their consent," observed National Right to Work Foundation Vice President Patrick Semmens. "Yet over a year and a half after the decision, California union bosses -- with the assistance of state officials -- continue to subject the state's public servants to schemes that violate these rights, all to fill union coffers with more illegal dues." ✚

Foundation Defends NMB Rule Simplifying Votes to Remove Railway and Airline Unions

Brief opposes union lawsuit challenging a simplified decertification procedure

WASHINGTON, DC – National Right to Work Legal Defense Foundation attorneys filed a legal brief in United States District Court last month for a flight attendant, opposing an effort led by the AFL-CIO to overturn a recent rule by the National Mediation Board (NMB) that simplifies the process for workers hoping to vote out a union they oppose.

Foundation staff attorneys filed the amicus brief for Allegiant Airlines flight attendant Steven Stoecker to defend the NMB's rule that removed arbitrary barriers to decertification elections under the Railway Labor Act (RLA). They also filed the brief for the Foundation itself, which has provided free legal representation to numerous workers in the railroad and airline industries under the jurisdiction of the RLA, which the NMB is charged with enforcing.

With Foundation Aid, Flight Attendant Defends Rights from Union Assault

The Foundation's Strategic Litigation Program's 1983 victory in *Russell v. NMB* allowed workers to terminate union monopoly representation under the RLA. However, removing an unwanted union under the old NMB rules required an unnecessarily complex process in which workers had to create and solicit support for a fake "straw man" just to vote out the incumbent union.

Under the NMB's new rules, finalized in July 2019, a majority of workers in a bargaining unit can simply petition for a direct secret-ballot vote to decertify a union they oppose.

Stoecker had attempted to remove the Transport Workers Union (TWU) from its monopoly bargaining status in his workplace from 2014 to 2016, but those attempts ultimately were



Trump NMB member Kyle Fortson was Chairman while the Board initiated changes to the process by which air and rail employees could vote out a union, following Foundation advice.

unsuccessful under the old "straw man" election rules. As a result, the TWU remains the monopoly bargaining representative over his workplace.

"The National Mediation Board's Final Rule simplifies the union selection or rejection process under the Railway Labor Act and erases nonstatutory barriers that hinder employees' efforts to freely choose or reject a representative," reads the amicus brief filed by Foundation staff attorneys. "The brief responds to a lawsuit filed by labor unions, which benefited from the complexities of the 'straw man' process, to challenge the new rule and the Board's statutory authority to establish it."

Foundation Advocacy Ended Needlessly Complex "Straw Man" Process

Before the NMB adopted the Final Rule last year, workers like Stoecker had to sign authorization cards designating an employee to

be the "straw man" representative even though that employee had no intention of representing the unit. In the election that followed, the ballot options included the name of the union that workers wished to decertify, the name of the "straw man," the option for a write-in candidate, and, confusingly, the option for "no union."

Under the old guidelines, workers who voted for either the "straw man" or "no union," in hopes to oust union officials, would unknowingly be splitting the vote opposed to unionization, as votes counted for these options were not tallied together but separately. The NMB's final rule allows workers to vote out union representatives directly, without the cumbersome and confusing prior scheme.

"That union bosses are suing the National Mediation Board for adopting this commonsense reform shows they are far more concerned with maintaining their power than respecting the right of rank-and-file workers to decide whether or not they actually want to remain in union ranks," commented National Right to Work Foundation President Mark Mix. "The Foundation has long advocated this type of change in the union decertification process. We are pleased the NMB has -- as we called upon it to do in comments filed last year -- finally made this commonsense reform.

"Ultimately the Railway Labor Act has many fundamental problems that require legislative action, not the least of which is that it grants union bosses the power to have workers fired for nonpayment of union dues or fees even in states with Right to Work laws," observed Mix. "That makes it all the more important that while we wait for more sweeping reforms, workers are not trapped in forced-dues ranks simply because of the unnecessarily complex 'straw man' decertification process." ✚



CHARITABLE GIVING TAX DEDUCTION FOR ALL TAXPAYERS

We hope that all of our supporters and their loved ones are safe and healthy as we face the impact of the COVID-19 virus on our lives and communities.

As part of its legislative response, Congress recently enacted a new one-time benefit for those who wish to make a tax-deductible contribution to the National Right to Work Foundation, which is an IRS recognized 501(c)(3) charity.

Charitable contributions this year up to \$300, including gifts to the Foundation, can now be fully deducted on your 2020 tax return, which you will file next year -- even if you use the standard deduction and therefore might not otherwise qualify.

Moreover, for Foundation supporters who do itemize, the limit on charitable cash gifts eligible for a deduction has been raised to 100% of Adjusted Gross Income (AGI) for 2020.

With your continued support, Foundation staff attorneys can keep fighting for workers against Big Labor coercion. Your help is especially needed this crucial election year as the Foundation challenges the illegal use of forced union dues for politics.

If you would like further information concerning a gift to the Foundation, please contact Ginny Smith, Director of Strategic Programs, at 1-800-336-3600.

U.S. Supreme Court Asked to Hear Continuation of *Janus* Case

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intervene in the case in March 2015, and have represented Janus ever since. The U.S. District Court for the Northern District of Illinois granted Janus' motion to file a complaint in intervention, which allowed the suit to move forward even after the court ruled that Rauner lacked standing to pursue the lawsuit.

The Supreme Court permitted union bosses to impose forced union fees on public workers in the 1977 *Aboud v. Detroit Board of Education* decision. However, before the *Janus* victory, Foundation staff attorneys secured several victories for workers which called the constitutionality of forced fees into question. In 2012, the court ruled in *Knox v. SEIU*

that union officials must obtain affirmative consent from workers before using workers' forced union fees for special assessments or risk infringing on their First Amendment rights. In 2014, the court ruled in *Harris v. Quinn* that requiring home healthcare providers who receive a subsidy from the government to pay union dues is a First Amendment violation.

Following Janus' groundbreaking win at the Supreme Court in June 2018, Foundation attorneys continued his case in Illinois federal courts, arguing that the Supreme Court's ruling is retroactive and that AFSCME should be required to return dues they

seized unconstitutionally before the decision. In this and similar cases, union bosses have made a so-called "good faith" argument to defend their seizing of dues before *Janus* was issued. The U.S. Seventh Circuit Court of Appeals in Chicago ruled in 2019 that AFSCME could keep the unconstitutional dues, prompting Janus' petition to the Supreme Court.

Hundreds of Millions of Dollars Potentially At Stake

"The Supreme Court agreed that the union taking money from non-members was wrong but the

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Mark Janus Seeks High Court Ruling on Return of Forced Dues

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union still has the money it illegally garnished from my paycheck,” commented Janus. “It’s time for AFSCME to give me back the money they wrongfully took.”

Foundation staff attorneys are currently fighting for thousands of workers in about 20 cases which seek refunds of dues seized unconstitutionally before *Janus* was decided. While Janus is seeking the return of \$3,000 of his own money, a favorable decision for him would set a precedent that could result in the return of over \$120 million to public servants just in Foundation-backed cases. Other cases brought by workers could bring that total to hundreds of millions of dollars.

Workers Already Winning Refunds of Illegal Dues with Foundation Legal Aid

“The Supreme Court has already sided with the Foundation arguments for Mark Janus and ruled that forcing public employees to fund union activities violates the First Amendment,” said National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. “The Supreme Court should take this case again to ensure that public sector union bosses are not permitted to profit from their widespread violation of workers’ First Amendment rights.”

Foundation staff attorneys in July 2018 secured the nation’s first-ever refund of dues seized unconstitutionally before *Janus* for Debora Nearman, an Oregon state wildlife employee. SEIU bosses were forced to settle and give back to Nearman over \$3,000 in illegal fees they had seized from her over two years, during which they had sponsored an aggressive political campaign against her own husband, who ran successfully for the Oregon Legislature in 2016. ✚



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

In these times of uncertainty and economic upheaval, we here at the National Right to Work Foundation continue to keep our eye on the ball as we carry out our mission to defend workers against forced unionism.

Despite many disruptions to daily life in the last few months, your Foundation continues to litigate cases for the victims of Big Labor’s coercive powers. Even with so much else going on, the statutes of limitations remain unchanged, briefs are still due, hearings take place (although more likely remotely now), and the requests for free legal aid continue to come in through the Foundation’s website and hotline.

In fact, at times like these, the Foundation’s mission is more important than ever.

We know from experience that union bosses will try to exploit crisis situations to expand their forced unionism powers over rank-and-file workers. Sure enough, just as soon as news broke that Congress would likely be providing economic stimulus to industries most impacted by coronavirus, union bosses were demanding companies that don’t hand their workers over to union control be excluded from such packages.

Big Labor’s thirst for power doesn’t stop, which is why we can’t either.

As you can see from the articles in this issue, your Foundation continues the fight for workers, enforcing and building on the *Janus* decision, defending rules to make it easier for workers to escape union ranks, and challenging attempts by union bosses to take money from workers in violation of their rights.

Fighting Big Labor coercion has never been easy, but with recent difficulties we appreciate your continued support now more than ever.

Thank you for all that you do.

Sincerely,

Mark Mix