Foundation Action

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

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More Workers Ask Supreme Court to Refund Unconstitutional Forced Dues

Four Foundation-backed cert petitions now filed at High Court with millions at stake

WASHINGTON, DC – Across the nation, public employees continue to seek free legal aid from National Right to Work Foundation staff attorneys, to fight for their First Amendment rights recognized in the landmark *Janus v. AFSCME* Supreme Court ruling. *Janus* was argued and won by Foundation staff attorneys.

Janus affirmed that public employees cannot be required to subsidize union activities as a condition of employment and that union payments can only be deducted with an employee's freely given consent.

Despite this clear ruling, union bosses have almost without exception refused to return money seized from workers in violation of the First Amendment. In response, Foundation staff attorneys are now assisting workers in more than a dozen cases seeking to force union officials to return illegal forced fees to tens of thousands of employees, with four such cases now pending at the U.S. Supreme Court.

Foundation staff attorneys asked the Supreme Court to hear Nathaniel Ogle's case, which seeks refunds for him and his coworkers of forced union dues that were seized from their paychecks in violation of the First Amendment.

Union Officials Refuse to Refund Illegally Seized Dues Post-*Janus*

In November, attorneys for Connecticut Department of Energy and Environmental Protection employees Kiernan Wholean and James Grillo filed a petition for writ of certiorari with the Supreme Court. It is asking the Justices to hear their case, seeking back years of union dues that they and their coworkers were forced to pay to Service Employees International Union (SEIU) union bosses in violation of the First Amendment. Their petition follows one filed in October for Ohio Department of Taxation employee Nathaniel Ogle, whose case seeks to require AFSCME union bosses to similarly return forced fees seized in violation of the *Janus* standard from potentially thousands of Ohio government employees.

With these two new cert petitions, there are now seven pending before the Supreme Court on this issue, four of which were filed for workers by Foundation staff attorneys. That includes the continuation of the original *Janus* case brought by Mark Janus.

If the Supreme Court decides to hear any one of these cases, a favorable ruling would create another groundbreaking precedent, potentially prompting the return in Foundation cases alone of over $130 million to employees fighting to get back money taken in contravention of their *Janus* rights.

Wholean and Grillo, who are not members of SEIU, originally

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Flight Attendant Sues Transport Union for Religious Discrimination

Allegiant Air Employee forced to pay union fees or lose input into work schedule

KNOXVILLE, TN – Allegiant Air flight attendant Annlee Post filed a federal lawsuit in November against Transport Workers Union of America Local 577 (TWU) because the union refused to accommodate her religious beliefs. She received free legal aid from National Right to Work Foundation staff attorneys.

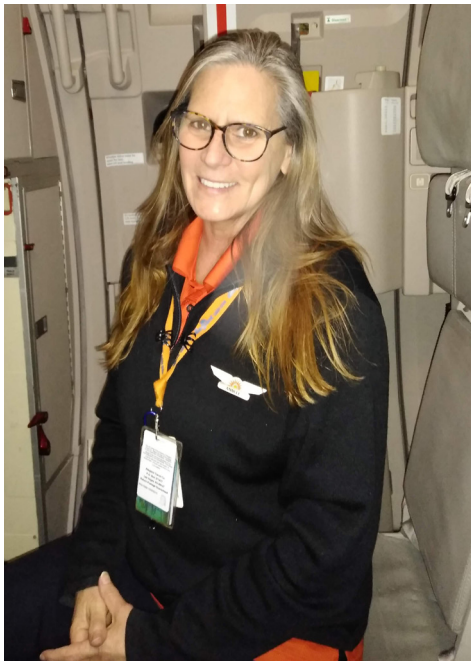
Post is a Christian, and she objects to funding the TWU on religious grounds. As recognized in the 2015 *EEOC v. Abercrombie & Fitch* Supreme Court decision, Post is not required to satisfy any special requirements to merit religious accommodation under Title VII of the Civil Rights Act of 1964.

To exercise her rights, Post sent two letters to union officials making them aware of her objection and asking that her dues payments be redirected to charity.

EEOC Issues "Right to Sue" Letter to Union Objector

When TWU officials refused this request, she filed a charge with the Equal Employment Opportunity Commission (EEOC) against the union.

The EEOC was unable to resolve Post's charge, but it issued a "Right to Sue" letter in August 2020, allowing her to file a federal lawsuit against the union to protect her rights. Post then filed a complaint in federal court alleging TWU officials illegally discriminated against her by refusing to accommodate her and threatening to revoke her bidding privileges.



Please stow your religious objections: TWU union bosses forced Allegiant Air flight attendant Annlee Post to fund the union in violation of her religious beliefs and federal law.

Bidding privileges control a flight attendant's ability to schedule trips, work, vacations and days off. Post asked the court for an order stopping TWU officials from requiring her and other employees to pay union fees that violate their sincere religious beliefs.

Post's lawsuit also alleges that union officials violated the United States Constitution's First and Fourteenth Amendments, which require union officials to follow specific procedures to demand forced dues payments. The union did not follow those procedures here.

Union officials did not provide a notice of how the forced-fee amount was calculated and an audit of the union's financial records. Nor did they give a notice of the procedure to challenge the fee amount.

Federal Law Prevents Union Threats to Workplace Privileges

Even though she lives in Tennessee, which has enacted Right to Work protections so workers who object to union membership can freely abstain from funding union activities for any reason, Post is subject to the Railway Labor Act (RLA) because she works for an airline.

The RLA overrides state Right to Work laws and allows union officials to compel union fees, but only "as a condition of continued employment." The RLA does not permit forced-dues payments based on any other condition -- such as bidding privileges.

Post's Foundation staff attorneys argue that TWU's monopoly bargaining agreement with Allegiant is invalid because it requires dues payments to maintain bidding privileges,

See 'Flight Attendant Sues' page 7

Foundation *Action*

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Foundation Battles Union Restrictions on First Amendment Rights at Ninth Circuit

*Cases challenge coercive, anti-*Janus *"escape periods" concocted by union bosses*

SAN FRANSCISO, CA – The 2014 National Right to Work Foundation victory for Pam Harris in the *Harris v. Quinn* Supreme Court case established that union bosses violate the First Amendment when they skim dues from homecare providers' state subsidies without their consent. Now, seven California homecare providers have just appealed to the Ninth Circuit Court of Appeals their federal lawsuit against Service Employee International Union (SEIU) Local 2015 officials for continuing to skim dues in violation of their rights.

According to their suit, SEIU honchos enforced a phony "escape period" on the homecare providers, illegally limiting the time in which they could stop the deductions. The providers' suit says this contravenes the U.S. Supreme Court's ruling in *Janus v. AFSCME*. The Court not only held that the government cannot force individuals to subsidize union activities as a condition of employment, but also that government agencies can only deduct union payments after receiving a clear and knowing waiver of their First Amendment right not to make such payments.

Dues-Skim Scam: SEIU Took Dues Without Informing Providers of Rights

Although the plaintiffs, Delores Polk, Heather Herrick, Lien Loi, Peter Loi, Susan McKay, Jolene Montoya and Scott Ungar, are not public employees, they were designated as such solely for the purpose of monopoly unionization. Then that was used as justification for the State of California to skim union dues from their payments at the behest of SEIU officials. The seven participate in the In-Home Support Services (IHSS) program, which allots Medicaid funds to those who provide home-based aid to people with disabilities.

Christopher Woods (right), seen here with Mark Janus, is taking up the latter's fight by challenging an ASEA union boss scheme that traps workers in union payments even after they have dissociated from the union.

Polk and the other plaintiffs recount in the lawsuit that SEIU union bosses began taking cuts of their Medicaid subsidies after confusing phone calls or mandatory orientation sessions. After the plaintiffs contacted the SEIU attempting to exercise their right to stop the flow of dues, SEIU operatives informed them that they could only opt out of union dues during short union-created "escape periods" of 10-30 days once per year.

The lawsuit also points out that the federal law governing IHSS forbids diverting any part of Medicaid payments to "any other party" besides the providers. In fact, in rulemaking urged by National Right to Work Foundation comments, the federal agency that administers Medicaid confirmed that skimming such payments for unions violates the Medicaid statute passed by Congress.

The seven plaintiffs now seek a ruling that both the taking of union dues without their knowing consent and the policy restricting the providers from ending the dues deductions are unconstitutional. The providers also seek refunds of all money that they and any other IHSS program participants had taken from their payments through the illegal scheme.

Alaska Union Bosses Confine Prison Employee in Unconstitutional Deductions

Also at the Ninth Circuit Court of Appeals, Alaska vocational instructor Christopher Woods recently filed an appeal in his case challenging an "escape period" scheme to block him and other Alaska state employees from exercising their First Amendment rights recognized in *Janus*.

In a November 2019 email, Woods, who has worked as a vocational instructor at Goose Creek Correctional Center since 2013, informed Alaska State Employees' Association (ASEA) officials he was exercising his *Janus* right to stop all union dues deductions. Rather than respect his rights, union officials rejected his request and told Woods that he could only "opt out" and not be a union member with written notice to this office during a 10-day period each year.

Woods persisted on December 2, 2019, submitting to both ASEA officials and the payroll office of the Corrections Department another email asking to cut off

*See '**Workers Challenge**' page 8*

NLRB to Prosecute Boston Hotel, UNITE HERE Union for Coercive "Card Check" Deal

Housekeepers say employer illegally assisted union organizers during unionization push

BOSTON, MA – With free legal aid from National Right to Work Legal Defense Foundation staff attorneys, in December 2019 four housekeepers at the Yotel hotel in Boston filed charges against their employer and UNITE HERE Local 26, after the hotel illegally assisted union officials with foisting their "representation" on workers during a "Card Check" organizing drive.

Now, in response to the charges filed for Cindy J. Alarcon Vasquez, Lady Laura Javier, Yesica Perez Barrios and Danela Guzman, the National Labor Relations Board (NLRB) Regional Director has issued a complaint to prosecute the hotel and UNITE HERE for violating the housekeepers' rights under federal law.

Agreeing with the workers' Foundation staff attorneys, the complaint charges the hotel with illegally assisting union organizers by providing the kind of assistance the Board has long held to be illegal when it benefits workers' decertification efforts, and charges the union with illegally accepting the unlawful assistance.

Yotel housekeepers (from left) Lady Laura Javier, Cindy J. Alarcon Vasquez and Yesica Perez Barrios got the NLRB to prosecute union and hotel officials for using a coercive "Card Check" drive to force them under union control.

NLRB: Employer Illegally Aided Union Campaign

The NLRB has long held that an employer taints employees' efforts to remove a union if it gives those workers support that amounts to more than "ministerial aid." Under that standard, the Board has held that an employer can't provide a list of bargaining unit employees or allow use of company resources when employees are trying to remove a union, because this assistance would tarnish the results of the election.

Foundation attorneys in this case argue that, under the same standard, Yotel Boston similarly tainted the union's organizing campaign by providing assistance to UNITE HERE union organizers.

The charges, which resulted in the NLRB complaint, say the hotel illegally assisted the union's coercive "Card Check" drive, during which employees were pressured by union operatives into signing union cards. These cards were later counted as "votes," and were used to bypass a secret-ballot election that would have determined whether the workers actually support union representation.

Foundation Cases Challenge Unequal Standard

The case is not the first in which the NLRB has addressed this double standard. In July, NLRB Region 19 issued a similar complaint in another case involving a hotel worker whose employer illegally assisted UNITE HERE Local 8 union officials in its "Card Check" drive at Embassy Suites in Seattle. There the NLRB also agreed that the employer had provided more than "ministerial aid," and therefore UNITE HERE officials "did not represent an uncoerced majority of the unit."

"The NLRB is finally addressing the double standard that for too long has favored union bosses in their coercive "Card Check" unionization drives," said National Right to Work Foundation President Mark Mix. "Union bosses pressure workers and get illegal assistance from employers to impose their so-called representation on workers, but they cry foul when that same assistance is given to workers attempting to remove unwanted forced representation.

"With these two complaints against UNITE HERE union bosses, the Board is correctly finding that what qualifies as more than 'ministerial assistance and support,' and violates the National Labor Relations Act, cannot depend on whether the employer is helping outside union organizers impose unionization on workers or is assisting workers in exercising their right to remove an unwanted union," Mix added.

Vegas Security Guards Win $4,200 in Case Challenging Illegal Dues Seizures

SPFPA officials rushed monopoly bargaining contract in attempt to trap workers in forced dues

LAS VEGAS, NV – Dozens of Las Vegas security guards employed by North American Security won a settlement last October against the Security, Police & Fire Professionals of America (SPFPA) union, which they had charged in April with illegally seizing dues from their paychecks. The guards received free legal aid from the National Right to Work Foundation.

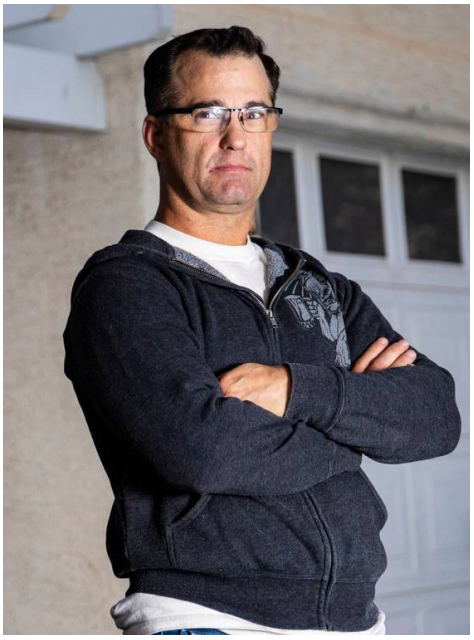
SPFPA union officials must now refund more than $4,200 to the security guards, whose timely requests to resign from union membership and cease dues deductions were wrongfully rejected by union officials who hastily extended their monopoly bargaining agreement with the guards' employer.

Union Officials Secretly Struck Contract after Guards Voiced Dissatisfaction

According to guard Justin Stephens' April 2020 charge filed at Region 28 of the National Labor Relations Board (NLRB) in Phoenix, SPFPA officials extended the bargaining contract with North American Security on January 31, 2020. The extension occurred one day after Stephens and the vast majority of his fellow employees at the federal courthouse in Las Vegas sent letters to the union stating that they no longer wanted it as the monopoly bargaining agent in their workplace.

The charge explained that Stephens later submitted a batch of letters to SPFPA officials in which he and his fellow employees tried to exercise their rights to resign union membership and stop dues deductions from their paychecks. These letters were sent within what the employees believed to be the contract's window for exercising their right to cut off dues payments.

However, the charge asserted, the union "did not acknowledge the timely revocation the employees made on the anniversary" of the contract, ostensibly because the union officials' hurried contract extension eliminated any opportunity for employees to cut off union dues before the existing contract's March 31 expiration.



"You can stand up to the union and not fail and not have fear of retaliation," security guard Justin Stephens told the* Las Vegas Review-Journal *about his and his coworkers' victory.

SPFPA bosses kept collecting full union dues "from all non-member bargaining unit employees" in violation of their right under the National Labor Relations Act to refrain from union activities and support, according to the charge. Stephens' charge also asserted that the union's sudden extension of the monopoly bargaining contract after the workers notified the union about their opposition amounted to "an apparent attempt to avoid a decertification" vote to remove the union.

Because Nevada has enacted Right to Work protections for employees, union bosses are additionally forbidden by state law from requiring any employee to join or pay dues or fees to a union as a condition of employment.

The settlement requires SPFPA officials to process any timely resignations by security guards and notify North American Security to cease dues deductions from those whose resignations they have already processed.

Foundation Wins Refunds of Unlawful Dues Seized from Dozens of Guards

SPFPA bosses must also return all dues seized from Stephens' and his coworkers' paychecks in violation of their rights. In the future, the settlement stipulates, union officials must always "accept and timely process" resignations and requests to cut off dues.

"I want people to see this and see that it's possible," Stephens told the *Las Vegas Review-Journal* in a story about his case. "You can stand up to the union and not fail and not have fear of retaliation."

"It's good news that Mr. Stephens and his hardworking colleagues have gotten back dues that were illegally taken from them by SPFPA union bosses who have demonstrated they are more interested in stuffing their coffers with union dues than respecting the wishes of the rank-and-file workers they claim to 'represent,'" commented National Right to Work Foundation Vice President and Legal Director Raymond LeJeunesse. "This type of legal trickery used by union bosses to stay in power despite the objections of most workers shows why the NLRB should eliminate its numerous policies that block workers from removing an unwanted union."

"Ultimately, the root of this problem is the federal labor law which grants union bosses monopoly bargaining powers, allowing them to force their so-called 'representation' on workers who don't want it and believe they would be better off without it," added LaJeunesse.

New Year: Make a Plan

As we welcome the New Year, the staff attorneys at the National Right to Work Foundation are busy challenging Big Labor coercion on behalf of independent-minded workers in over 150 active ongoing cases, with more being added all the time.

Of course, none of this is possible without the generosity of our supporters!

Right now, gifts of cash and securities (where you pay no capital gains tax when contributing stock that has been held for more than a year) are the most common form of gifts that the Foundation receives. Increasingly though, Foundation supporters are also deciding to leave a long-term legacy of freedom by including the Foundation in their wills or trusts.

Doing so can actually be quite simple: 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 and specific bequests are satisfied. A specific bequest may be a specific amount of cash or specific property given to the Foundation.

Including the National Right to Work Foundation in your estate plan can be as simple as adding a codicil to an existing will or amending a trust you already have in place. Please consider doing so today!

Your investment in the long-term Strategic Litigation Program of the Foundation is vital. Remember: Gifts to the Foundation are tax-deductible as the Foundation is a recognized 501(c)(3) charitable organization.

If you have any questions, or need further information on estate planning, please contact Ginny Smith, Director of Strategic Programs, at 1-800-336-3600, or gms@nrtw.org. (As in all estate matters, please take the time to consult your estate attorney or tax advisor).

Workers Nationwide Urge High Court to Enforce *Janus*, Order Refunds

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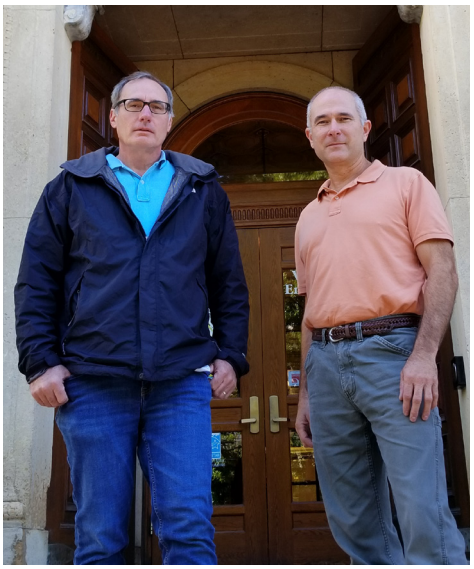
filed their case in 2018 in the U.S. District Court for the District of Connecticut shortly before the High Court decided *Janus*. The State ceased deducting dues from their paychecks for SEIU following a letter to the State Comptroller from a National Right to Work Foundation attorney, which threatened legal action for any dues deductions from non-members that continued after *Janus*.

However, SEIU union officials continue to refuse to refund dues that they took from Wholean, Grillo and other non-members in violation of the *Janus* First Amendment standard before the decision, even though they knew the employees never consented to pay.

Ogle filed his case at the District Court for the Southern District of Ohio just after *Janus* was decided. Like Wholean and Grillo, he was never a member of the union but had mandatory union fees deducted from his paychecks. The Ohio affiliate of the national AFSCME union has around 30,000 public employees across the Buckeye State under its bargaining monopoly. If a class is eventually certified in Ogle's case, it could potentially include thousands of workers.

Foundation Attorneys: High Court Must Reject Union Attempts to Dodge *Janus*

Lower courts in these and other lawsuits have accepted union lawyers' so-called "good faith" contentions for letting union bosses keep the dues collected in violation of the non-members' constitutional rights. This is at odds with the Supreme Court's *Janus* ruling, which did not proscribe retroactive relief. Indeed, it observed that union officials have been "on notice" for years that mandatory fees likely would not comply with the High Court's heightened level of First Amendment scrutiny, articulated in the 2012 Supreme Court decision in



Connecticut public employees Kiernan Wholean (left) and James Grillo are fighting at the Supreme Court for their and their coworkers' Janus rights, which SEIU officials violated for years.

the Foundation's *Knox v. SEIU* case.

Foundation staff attorneys point out in the petitions before the Supreme Court that a "good faith" defense has never existed under Section 1983 of the Civil Rights Act of 1871, the statute under which these lawsuits are brought. Section 1983 specifically imposes liability on those who violate the constitutional rights of others while acting "under color of" existing law.

Not all judges, however, have been convinced by union officials' dubious "good faith" argument for keeping the unconstitutionally seized payments. In *Wenzig*, another Foundation-backed case, a majority of a Third Circuit panel denied the existence of such a defense. In a supplemental brief, Foundation attorneys cited the confusion among lower courts as a significant reason the court should hear the continuation of *Janus*.

"With seven petitions on this issue now pending with the High Court and more to be filed soon, it is time the Supreme Court hears this issue and ends the denial of justice for tens of thousands of non-member government employees whose First Amendment rights were violated," commented National Right to Work Foundation President Mark Mix. "Section 1983 of the Civil Rights Act, the federal statute under which all these cases were filed, was specifically intended to allow individuals to remedy the deprivation of their rights when it occurs under color of law. It's outrageous that union bosses have thus far been allowed to keep money seized in violation of the First Amendment because it was authorized by then-existing but unconstitutional law.

"That result is especially specious because, as the Supreme Court recognized in *Janus*, union bosses have been 'on notice' since 2012 that forcing government employees to pay union fees was likely unconstitutional," Mix added.

Flight Attendant Sues over Discriminatory Dues

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whereas payment "as a condition of continued employment" is the only legal forced unionism agreement under the RLA.

"Annlee Post and others like her should not have to choose between privileges at work and their religious beliefs," said National Right to Work Foundation Vice President Patrick Semmens. "TWU bosses knew about Ms. Post's objections, but refused to accommodate them as longstanding federal law requires. They instead threatened to take away her bidding privileges, simply because she would not fund their organization in violation of her religious faith.

"This case is a reminder of why no worker should be forced to fund a union with which he or she disagrees, no matter whether their objection is religious or for any other reason," Semmens said.

Workers Challenge Union Dues 'Escape Periods'

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dues. Although the payroll office confirmed to both Woods and the ASEA that it had received the request, an ASEA official responded by merely telling the payroll office that she was "still communicating with [Woods] on the matter," the complaint says. Woods reports in his lawsuit that he has "not received any further communications" from either the ASEA or the payroll office, and that full dues are still being seized from his paychecks.

Foundation String of Triumphs Against *Janus* Restrictions Unlikely to End

"'Escape periods' are shameless union boss-concocted schemes that only exist to keep dues money rolling into their coffers after employees have clearly communicated that they do not wish to support the union," observed National Right to Work Vice President and Legal Director Raymond LaJeunesse. "Although these arrangements are egregious in any context, trapping homecare providers in dues-skim schemes which deprive them of money they receive for taking care of the disabled is particularly unconscionable, and additionally breaches federal law which prohibits those funds from going anywhere other than to the people giving care.

"Whether it's the landmark victories in *Harris* and *Janus* or the eight recent lawsuits in which Foundation staff attorneys have knocked down 'escape period' policies and secured refunds of illegal dues for workers, the Foundation has a track record of success in these cases. Union bosses shouldn't hold their breath in the hopes of keeping seized dues," LaJeunesse added.

Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

I don't have to tell you that 2020 was a challenging year in more ways than one.

But despite the obstacles we faced, your National Right to Work Foundation has kept its eye on the ball by continuing to tirelessly assist workers escape the grasp of forced unionism.

We are extremely proud of all that we accomplished in 2020.

The Foundation's 21 staff attorneys litigated more than 250 cases last year, an impressive pace that your Foundation has maintained for several years running.

Moreover, as you will read in this issue of **Foundation *Action***, your Foundation has pushed forward with enforcing the landmark Foundation-won *Janus v. AFSCME* U.S. Supreme Court decision, a precedent that freed more than five million government employees from being forced to pay union officials just to keep their job.

Not surprisingly, union bosses have continued to keep government employees under their thumb in defiance of *Janus* through unconstitutional schemes like "escape periods" that block workers from exercising their First Amendment rights for months or even years.

But your Foundation has effectively fought back by winning many legal cases for workers challenging these illegal "escape period" schemes and other coercive Big Labor tactics.

Of course, none of this would have been possible without your generous support.

With your ongoing investment, we intend to keep fighting in the courts and administrative agencies to end forced unionism in every manifestation -- no matter what comes our way in 2021.

We look forward to partnering with Right to Work supporters like you in the year ahead so that together we can continue our winning streak against Big Labor coercion.

Thank you for all that you do.

Sincerely,

Mark