



# Foundation *Action*

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

Vol. XLI, No. 6

8001 Braddock Road • Springfield, Virginia 22160

[www.nrtw.org](http://www.nrtw.org)

November/December 2021

## Foundation Opposes Biden Rule to 'Authorize' Illegal Union Skim of Medicaid Funds

**Comments: Federal law prohibits diverting Medicaid funds away from homecare providers**

WASHINGTON, DC – The National Right to Work Foundation filed formal comments with the Centers for Medicaid and Medicare Services (CMS), a division of the Department of Health and Human Services, asking the agency to reject an attempt to authorize state officials to redirect Medicaid funds into union coffers.

The Biden Administration's pending proposal would overturn a 2018 Foundation-backed rule that confirmed that federal law prohibits union officials from skimming union dues payments from Medicaid funds intended for those who provide home-based assistance to people with disabilities. The Foundation's comments argue that the Trump-era rule simply ensured that Medicaid regulations conformed to long-standing statutory law, and that the federal statute governing Medicaid prohibits diverting payments to any third parties, including unions and union PACs.

### Under Obama, Union Bosses Cashed Out at Expense of Medicaid Recipients

The comments also detail the Obama Administration's role in permitting union officials to violate the law, explaining that a special exemption created in 2014 by the Administration gave union officials legal cover to siphon upwards of \$1 billion from Medicaid payments.

Union officials, especially at the Service Employees International Union (SEIU), have long used



**Harris v. Quinn plaintiff Susie Watts (left) said her victory against forced dues for homecare providers was really a win for her disabled daughter Libby: "It's not even about me as a homecare provider... They're her benefits that are being siphoned off."**

deceptive and even unconstitutional tactics to divert taxpayer-funded Medicaid payments into union coffers.

Before the Supreme Court's ruling in the Foundation-won 2014 *Harris v. Quinn* decision, homecare providers in over a dozen states were required to fund union activities. State governments automatically deducted fees from providers' Medicaid payments even though such union dues diversions violated federal law regarding Medicaid funds. In *Harris*, the court held that mandatory union payments violate the First Amendment rights of homecare workers who do not wish to support union activities.

Even after the *Harris* decision was issued, union officials continued seizing money from hundreds of thousands of providers across the country under cover of the Obama-

era rule creating an exception to the prohibition against skimming Medicaid funds. Union officials used numerous underhanded tactics to keep the dues skim going, including,

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# Workers Who Voted Against Union Oppose Order Forcing Union on Them

## *Biden NLRB seeks to overturn vote of Red Rock Casino workers against Unite Here*

LAS VEGAS, NV – A large majority of the workers at Red Rock Casino in Las Vegas, Nevada, voted “no” to unionization, but a federal district court judge later issued an order forcing their employer to bargain with union officials anyway.

The Casino appealed the judge’s order to the U.S. Court of Appeals for the Ninth Circuit. National Right to Work Legal Defense Foundation attorneys assisted Red Rock food service employee Raynell Teske for free in filing her legal brief at the Ninth Circuit, arguing the judge was wrong to impose a union monopoly on the workers after the union had already lost an election.

### Judge Overrides Workers’ Election Choice

In December 2019, the National Labor Relations Board (NLRB) administered a secret-ballot election on whether to unionize Red Rock. A majority of those voting rejected union officials’ effort to become their monopoly bargaining “representatives.”

Nevertheless, NLRB Region 28 Director Cornele Overstreet sought a federal court injunction demanding



**Casino employees bearing the messages “We Despise Union Lies” and “Respect Their Votes” protested outside Culinary Union headquarters in Las Vegas after union bosses tried to block Red Rock workers’ emphatic vote to remove the union.**

the union be imposed over the workers’ objections.

On July 20, 2021, notoriously partisan Judge Gloria Navarro, appointed by Barack Obama, granted the NLRB Director’s request. She fired off a rare “Gissel” order forcing Red Rock to bargain with union officials despite the employees’ vote against unionization.

The judge based her order on union officials’ claim that a majority of workers had signed union authorization cards before the

vote. Teske’s legal brief argues that those “card check” signatures are unreliable, and not reason enough to conclude the union ever had majority support.

After all, the level of union support was tested by the secret-ballot election and the results were clear: union officials received only 40% support from the eligible employees’ votes. As the Supreme Court has long recognized, secret ballots are a far more reliable way of gauging worker support for a union, because workers are often pressured, harassed, or misled by union organizers into signing cards.

### Union Handbook Admits: ‘Card Check’ Is Unreliable

Unions themselves know that “card check” signatures do not reliably indicate worker support. The AFL-CIO admitted in its 1989 organizing handbook that it needed at least 75% card check support before having even a 50-50 chance of winning a secret-ballot election. An earlier guidebook acknowledged that some workers sign cards just to “get the union off my back.”

Teske’s brief argues the union’s possession of so-called “cards” does

## Foundation Action

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Distributed by the  
**National Right to Work Legal Defense Foundation, Inc.**  
8001 Braddock Road, Springfield, VA 22160  
www.nrtw.org • 1-800-336-3600

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## Foundation Demands Recusal of Former SEIU Lawyers Appointed to Labor Board

***Biden NLRB appointees have blatant conflicts of interest in case brought by SEIU officials***

WASHINGTON, DC – The National Right to Work Legal Defense Foundation submitted a letter to the National Labor Relations Board (NLRB) Inspector General (IG) and chief ethics officer, urging them to remove NLRB members David Prouty and Gwynne Wilcox from involvement in an ongoing federal case and any cases brought by Foundation-assisted workers against Service Employees International Union (SEIU) affiliates.

Prouty and Wilcox were both appointed to the Board by President Biden. Prior to their appointment, both were lawyers for influential SEIU affiliates. The NLRB members, including Prouty and Wilcox, are currently being sued by the SEIU in federal court over a rule finalized by the Trump NLRB. That rule clarified that a company that does not exercise direct control over employee wages and working conditions cannot be charged with unfair labor practices committed by its related entities, such as franchisees.

Union officials want to change that so-called “joint employer” standard to launch top-down organizing campaigns to target workers for monopoly unionization. During such campaigns, union officials often attack companies in the press and through coordinated litigation in order to get employer assistance in imposing unionization on workers, including by bypassing the secret-ballot vote process for unionization.

### Workers Regularly Charge SEIU Union Affiliates with Rights Violations

The letter from Foundation President Mark Mix points out Prouty and Wilcox’s recusal is of particular interest to the Foundation because “Foundation Staff Attorneys frequently provide free legal representation to employees involved in litigation before the National Labor Relations Board against SEIU



Credits: NLRB Twitter, Bowdoin College

***Foundation attorneys demand that the NLRB IG stop David Prouty (left) and Gwynne Wilcox, fresh off tenures as high-ranking SEIU lawyers, from derailing efforts to ensure workers can resist union influence they oppose.***

or its affiliates,” and that the same considerations “should mandate the recusal of Member Wilcox and Member Prouty in those cases as well.”

Each year, Foundation staff attorneys handle more than 100 cases brought for workers at the NLRB challenging union violations of workers’ rights. SEIU affiliates are among the most often cited in those cases for violating federal law. Just since 2018, Foundation attorneys have assisted workers in 67 cases against SEIU affiliates, over half of which have been at the NLRB.

The letter also asks that the NLRB IG “apply the same level of vigor in examining their conflicts as he did in matters involving former Board Member William J. Emanuel.” Although the NLRB finalized its “joint employer” standard through the rulemaking process, an earlier 2017 case decision that would have adopted the same standard was gutted because the NLRB IG ruled that then-Member Emanuel should have recused himself.

The Foundation’s letter details

Member Prouty’s history as General Counsel of SEIU Local 32BJ, a powerful SEIU affiliate. It further points out that Member Prouty “played a key role in opposing the Board’s final rule on joint employment,” personally signing comments against the rule, which is further evidence of his specific conflict of interest in the pending case.

### Letter: Ex-SEIU Board Member Even Headed Up Group at ‘Core’ of Litigation

Member Wilcox’s conflicts go even deeper, according to the Foundation’s letter. It notes that Member Wilcox was at the forefront of a union campaign that openly opposed the NLRB’s “joint employer rule,” a campaign that is “specifically named as interested in, and a core part of, the Litigation” against that rule.

The Biden Administration has gone above and beyond in its efforts to entrench union boss influence at

## ABC Cameraman Wins Ruling against CWA for Illegal Threats and Forced-Dues Demands

### *Decisive victory comes as unanimous NLRB cites CWA union lawyers for misconduct*

PORTLAND, OR – ABC cameraman Jeremy Brown was pleased in December 2020 when a National Labor Relations Board (NLRB) Administrative Law Judge (ALJ) ruled in his favor that National Association of Broadcast Employees and Technicians (NABET-CWA) union officials had illegally seized full union dues from him despite the fact he is not a union member.

But that was not the only thing about which Brown had filed charges against the CWA union. The ALJ let CWA lawyers off the hook for sending him two harassing “evidence preservation” letters over the course of the litigation, which were intended to retaliate against Brown for standing up for his rights under federal law and absurdly ordered that he hold onto things like pedometer and GPS data.

This August, with free legal aid from National Right to Work Foundation staff attorneys, Brown won a unanimous decision from the full NLRB in Washington, D.C., which affirmed the ALJ’s judgment on the illegality of the dues seizures but also went further to find that CWA lawyers were “willing to go to extreme -- and perhaps harassing -- lengths to penalize the Charging Party, placing the letters outside the bounds of legitimate efforts to ensure evidence preservation.”

### **CWA Union Bosses Stonewalled Cameraman’s Attempt to Invoke *Beck* Rights**

Brown resumed regular work with ABC in 2016 after intermittent hires since 1999, at no point joining the union. A new president, Carrie Biggs-Adams, took over the local CWA union in late 2018 and sent Brown a series of letters in early 2019 which claimed that, as a condition of employment, he had to pay nearly \$10,000 in initiation fees and “back-agency dues.”

Because Brown works primarily



***“It’s outrageous that just for trying to defend my basic freedoms I encountered fierce opposition from union bosses who claim to ‘represent’ me,” said Jeremy Brown.***

in states without Right to Work protections, he can be required to pay some fees to the union as a condition of employment.

Brown, who was unaware until 2019 that he was under the CWA union’s monopoly bargaining power, emailed Biggs-Adams in April 2019 asking for “clarification” about the fee demands. He also exercised his rights under the Foundation-won *CWA v. Beck* Supreme Court decision to object to paying union fees for any purpose other than core bargaining activities. Biggs-Adams ignored this request and several follow-ups by Brown, and notably never informed Brown about the union’s own rule that *Beck* objections must be mailed to the union’s national headquarters.

The ALJ’s December 2020 decision held that the CWA union violated Brown’s rights under the National Labor Relations Act (NLRA) through its officials’ omissions and the failure to reduce his dues. The ALJ ordered that the local union provide Brown with “a good faith determination of the reduced dues and fees objectors must pay,” “reimburse Brown for all dues and fees collected” beyond what is required by *Beck* with interest, and post notices informing the employees in Brown’s workplace

of the decision.

“Not paying for union politics is my right, and it never should have been so difficult to exercise that right,” Brown told a *Washington Free Beacon* reporter about the NLRB decision. “While I’m thankful for this victory, it’s outrageous that just for trying to defend my basic freedoms I encountered fierce opposition from union bosses who claim to ‘represent’ me but don’t respect my rights.”

However, the ALJ did not uphold additional charges Brown filed challenging the union lawyers’ intimidating “evidence preservation” letters. Brown therefore requested review by the NLRB in Washington, which has now ruled that those letters were illegal harassment.

### **Union Lawyers Cited for Threatening Letters**

In addition, the NLRB found the CWA lawyers “have not conformed their conduct to the standards of ethical and professional conduct required of practitioners appearing before the Agency.” Specifically, the Board found that the CWA lawyers engaged in unprofessional behavior by insulting Brown’s Foundation-provided attorneys during the proceedings. The Board referred the union lawyers’ conduct “to the attention of the Investigating Officer for investigation and such disciplinary action as may be appropriate.”

“NABET officials and lawyers subjected Jeremy Brown to layers upon layers of union malfeasance and intimidation just because he exercised his right to remain a non-member and didn’t want to pay for union bosses’ political expenditures,” commented National Right to Work Foundation Vice President Patrick Semmens. “He courageously stood up for his rights for well over two years. We at the National Right to Work Foundation were proud to support him in a case in which his rights have now been fully vindicated.” ✚



## Cleveland Probation Officer Challenges Years of *Janus*-Breaching Dues Seizures

*Union officials covertly began seizing full dues after Janus decision, refuse to return money*

CLEVELAND, OH – Cuyahoga County probation officer Kimberlee Warren is suing the Fraternal Order of Police Ohio Labor Council (FOP) union, charging union officials with breaching her First Amendment right as a public employee to refuse to support union activities. She is receiving free legal representation from National Right to Work Legal Defense Foundation staff attorneys.

Foundation staff attorneys contend that FOP union officials ignored her constitutional rights recognized in the Foundation-won 2018 *Janus v. AFSCME* U.S. Supreme Court decision. In *Janus*, the Justices declared it a First Amendment violation to force any public sector employee to pay union dues or fees as a condition of keeping his or her job. The Court also ruled that public employers and unions cannot take union dues or fees from a public sector employee unless they obtain that employee's affirmative consent.

Warren was not an FOP union member, even before the *Janus* decision. However, her federal lawsuit details that astoundingly union officials furtively opted her into formal membership and full dues deductions from her paycheck *after* the *Janus* decision was issued, an event which should have prompted union officials to cease seizing all money from her.

### FOP Union Bosses Brazenly Increased Forced-Dues Deductions After *Janus*

FOP union chiefs continued these surreptitious deductions until December 2020, Warren's lawsuit notes, when she notified union officials that they were violating her First Amendment rights by taking the money and demanded that the union stop the coerced deductions and return all money that they had taken from her paycheck since the *Janus* decision.

When the deductions ended,



**Kimberlee Warren is now fighting *Janus*-uncompliant dues practices with the backing of Foundation staff attorneys, who have already successfully defended the *Janus* rights of numerous Ohio employees, just a few of whom are pictured above.**

FOP chiefs refused to give back the money that they had already seized from Warren in violation of her First Amendment rights. They claimed the deductions had appeared on her check stub and thus any responsibility to end the deductions fell on her -- even though to her knowledge they had never obtained permission to opt her into membership or to take cash from her paycheck to begin with.

According to the lawsuit, Warren also asked FOP bosses to provide *any* dues deduction authorization document she might have signed. FOP officials rebuffed this request as well.

Union bosses were authorized by state law before the *Janus* ruling to seize from non-member workers' paychecks only the part of dues they claim go toward "representational" activities. FOP union officials took this amount from Warren prior to *Janus*. However, their forcing her into membership afterward means they started taking full dues from her wages, *even more* money than they did before *Janus* despite the complete lack of consent.

Warren's lawsuit seeks the return of all dues that FOP union officials

garnished from her paycheck since the *Janus* decision was handed down.

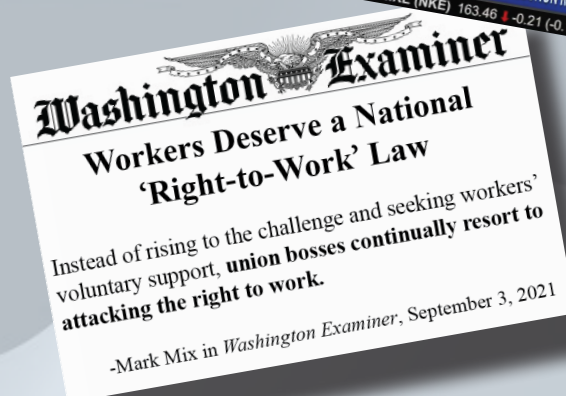
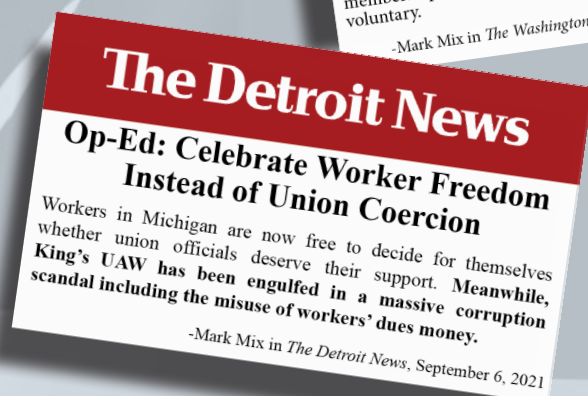
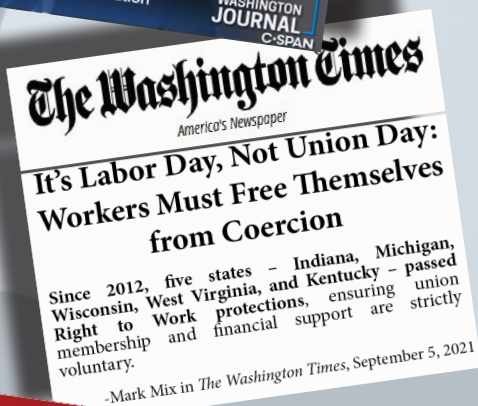
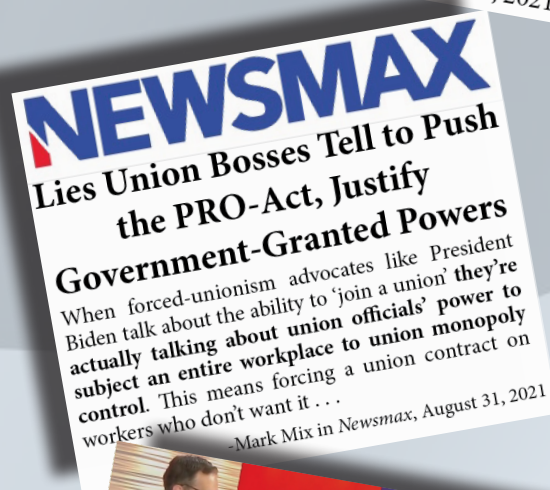
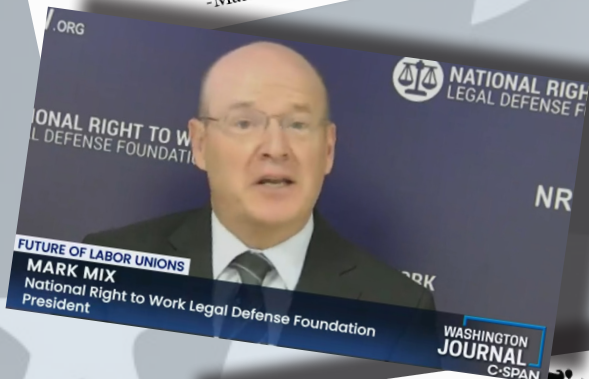
### Probation Officer Seeks Punitive Damages for Unchecked *Janus* Abuses

Her lawsuit also seeks punitive damages because FOP showed "reckless, callous" indifference toward her First Amendment rights by snubbing her refund requests.

"All over the country, union officials are stopping at nothing to ensure they can continue ignoring workers' First Amendment *Janus* rights and continue siphoning money from the paychecks of dissenting employees," commented National Right to Work Foundation President Mark Mix. "After *Janus* was handed down, FOP union officials in Warren's workplace could have asked her to support the union voluntarily, but instead, tellingly, they began surreptitiously siphoning full dues out of her paycheck without her consent in direct contravention of the Supreme Court's ruling." ✎

# FOUNDATION ON LABOR DAY 2021: UNION BOSS COERCION HURTS WORKERS

Foundation experts kept the worker freedom beacon burning bright this Labor Day, reaching Americans in over 60 opinion pieces, radio & TV shows, news articles and more, including:





## Foundation Comments: Dues-Skim Schemes Violate Federal Law

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according to providers' reports, claiming the dues payments were mandatory, blocking or ignoring requests to stop the deductions, and even forging signatures to authorize them.

### Unlawful System Exists to Subsidize Union Politics

"[Home and Community Based Service] Medicaid payments are supposed to pay for care for the severely disabled," the Foundation's comments state. "Diverting these payments to third-party special interests to subsidize their political agendas, lobbying and recruitment campaigns is as unconscionable as it is unlawful" under the federal law governing Medicaid.

"What you're seeing is a misuse of Medicaid funds being steered away from paying for care to disabled people and being used for politics," Foundation staff attorney William



**Biden Health and Human Services Secretary Xavier Becerra is presiding over the Administration's attempt to funnel Medicaid funds into the coffers of Biden's political allies at the SEIU.**

Messenger, who argued *Harris*, told *The Washington Free Beacon* in its report about the Foundation's comments. "They set up an entire system to pressure Medicaid providers to assign a portion of their Medicaid funds over to" union officials and their political action

committees.

Under the 2018 rule, union officials may still collect payments from caregivers who voluntarily support union activities, but cannot use taxpayer-funded government payment systems to deduct the dues from Medicaid payouts. Voluntary union supporters could still personally make payments just as millions of Americans make regular payments to private businesses or other organizations.

"The Biden Administration's plan to reauthorize the Medicaid union dues skim is a cynical ploy to allow their political allies to divert funds that federal law makes clear should be going to help those who are homebound or have significant disabilities," observed National Right to Work Foundation Vice President Patrick Semmens. "Homecare providers' own free choice should determine whether union bosses receive their support, not politically motivated, federally imposed special exemptions." ✚

## Biden Appointees' Conflicts of Interest Exposed by Foundation

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the NLRB. Just minutes after being inaugurated, President Biden took the unprecedented step of firing then-NLRB General Counsel Peter Robb, who still had 11 months left on his Senate-confirmed term. Robb had aggressively supported cases in which workers sought to free themselves from coercive union boss-created schemes.

### Foundation Also Calls Out NLRB General Counsel

Robb's replacement, Biden-appointed Jennifer Abruzzo, is a former Communications Workers of America (CWA) union lawyer who, Freedom of Information Act (FOIA) records requests from the Foundation revealed, was half of a two-person Biden NLRB transition team that engineered Robb's first-of-

its-kind ouster.

In a separate letter, Foundation staff attorneys have demanded Abruzzo's recusal from an ongoing NLRB case brought by an ABC cameraman against a CWA affiliate. (See page 4.)

The letter points out that, while at the CWA International as special counsel, Abruzzo was responsible for the very legal policies that CWA affiliates are bound to follow, including the one challenged by the worker's Foundation-provided attorneys in the case.

"The Biden Administration has already displayed some of the most biased and politically motivated behavior at the NLRB since the agency's inception, all in an attempt to unfairly rig the system to favor Biden's union boss political allies over protecting workers' individual rights," commented National Right

to Work Foundation President Mark Mix. "If Prouty and Wilcox's obvious conflicts of interest are unaddressed in this case, the message from the Board will be clear that ethics policies and recusal rules no longer apply now that pro-union boss Biden appointees are in power." ✚

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## Worker Challenges NLRB Attempt to Overturn Vote to Remove Union

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not give union officials permission to take over, especially after they lost a secret-ballot election.

### Brief: A Judge's Order Shouldn't Overturn Workers' Clear Choice

The Foundation-aided brief urges that the "Gissel" order be overturned and says that imposing the union's monopoly power despite the workers' vote against it treats workers "like children" who did not understand what they were doing when they voted against union affiliation.

"Ms. Teske and her coworkers chose to reject unionization at the ballot box, but Judge Navarro decided to use her power to overturn the election," said National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. "Time and time again, we see workers pressured, misled and even bribed to sign union cards, which is why 'Card Check' is widely accepted as unreliable, especially compared to an NLRB-supervised secret-ballot election."

"The Court of Appeals should promptly overturn Judge Navarro's coercive order, and restore the actual choice workers made at the ballot box. Federal judges and NLRB bureaucrats cannot be allowed to override workers' choices," added LaJeunesse. ✠

**National Right to Work  
Legal Defense Foundation**

**Rated "A"**  
**by**  
**CharityWatch**

Source: *Charity Rating Guide*  
October 2021  
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## Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter,

In no time at all, Joe Biden has installed forced-unionism zealots to key positions across his Administration.

Predictably, powerful federal agencies -- including not only the Department of Labor and National Labor Relations Board, but also those seemingly unrelated to union issues like the agency in charge of administering Medicaid -- are now being wielded like taxpayer-funded arms of Organized Labor.

For example -- as you can read on the front page of this issue of **Foundation Action** -- this includes authorizing union officials to skim hundreds of millions of taxpayer dollars in union dues from Medicaid payments intended for the care of the disabled.

But your National Right to Work Foundation is already taking action, and I am confident that with your continued support the Foundation will be able to effectively counter many egregious Biden Administration Big Labor power grabs.

You see, when union bosses are most aggressive, their oversteps can provide Foundation staff attorneys with key opportunities to set new legal precedents establishing new protections for workers opposed to union affiliation and dues payment.

That's exactly what your Foundation did during the Obama Administration with great success. In fact, Foundation staff attorneys won two key Supreme Court precedents then: *Knox v. SEIU* (2012) and *Harris v. Quinn* (2014), which laid the groundwork for our later victory in *Janus* (2018).

Moreover, five states enacted new Right to Work laws during the Obama years, all of which Foundation staff attorneys successfully defended in the courts from Big Labor legal challenges.

Of course, battling union bosses and their allies in the Biden Administration will require a significant investment of time and treasure.

So I'm grateful for the continued backing of Foundation supporters like you to enable your Foundation to fight and win against the challenges we will face in the coming years.

Sincerely,