



Foundation *Action*

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California Lifeguards Ask Supreme Court to Blow Whistle on Dues-Trap Scheme

Union bosses' 'maintenance of membership' scheme drowns lifeguards' Janus rights for four years

LOS ANGELES, CA – National Right to Work Foundation client Jennifer Marshall, an Orange County, CA, lifeguard, told the *Los Angeles Times* in May how hard California Statewide Law Enforcement Agency (CSLEA) union officials pushed union membership on her and her colleagues.

“They really pushed us to sign up for the union without a lot of information behind it,” said Marshall. “It was kind of a sign-the-papers-and-we’ll-talk-about-it-later kind of thing.” After she signed up, she hardly ever saw or heard from union officials again -- but full union dues were coming out of her paycheck.

What she and many of her colleagues, whom union bosses had cajoled into signing up, didn’t expect was how hard it would be to exit a union that didn’t seem to be doing anything for them. When she and her colleagues tried to resign, CSLEA officials told them that they were stuck in both full union dues payments and full union membership until 2023, pursuant to a so-called “maintenance of membership” requirement.

Marshall, along with lead plaintiff Jonathan Savas and 21 other colleagues, sued CSLEA bosses in federal court in 2020 for violating their constitutional rights. They argued the “maintenance of membership” requirement blatantly infringes on their First Amendment rights under the Foundation-won



These California lifeguards can ride the waves, but they certainly didn’t “waive” their Janus rights. In their Supreme Court bid, they hope to stop union bosses from locking them out of their First Amendment rights for years.

Janus v. AFSCME Supreme Court decision. In *Janus*, the Court declared that public sector workers cannot be forced to bankroll a union without voluntarily waiving their First Amendment right to abstain from union payments. The lifeguards also sued the state of California for its role in enforcing the unconstitutional dues deductions.

Secret Union Dues Scheme Has Been Illegal for 45 Years

Marshall, Savas, and their fellow lifeguards are now petitioning the Supreme Court of the United States to hear their case, arguing CSLEA bosses’ restrictive arrangement even violates Supreme Court precedent that predates *Janus*.

The lifeguards’ Foundation-

provided attorneys argue in the petition that “maintenance of membership” requirements not only flout *Janus*’ ban on all forced

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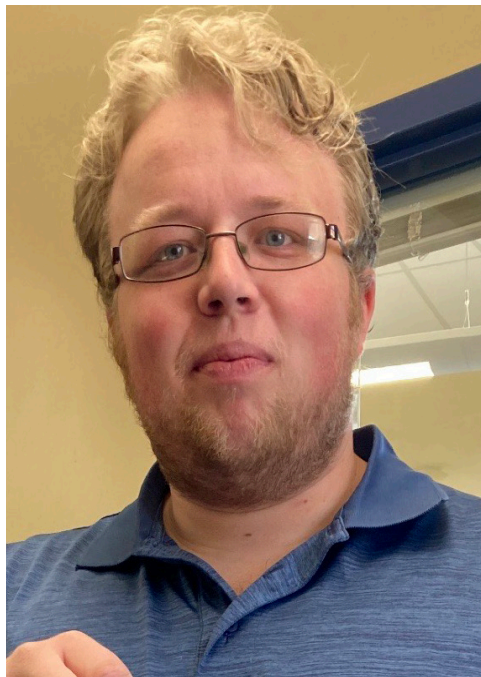
Foundation Defends Grocery Employees Against Illegal Union Strike Fine Threats

Facing Foundation attorneys, UFCW union officials are dropping illegal fines

DENVER, CO – Grocery store workers at King Soopers are continuing to win their legal battles against United Food and Commercial Workers (UFCW) Local 7 union officials' illegal attempts to fine workers for exercising their right to work during a January UFCW strike action. While the union remains under investigation by the National Labor Relations Board (NLRB) for a series of charges filed by workers with free legal aid from the National Right to Work Legal Defense Foundation, several workers have already successfully challenged thousands of dollars in union fines.

Workers Slam Union With Federal Charges After Threats

Two King Soopers workers, Nick Hall and Marcelo Ruybal, filed federal charges against UFCW in response to union officials illegally threatening to fine workers who chose to exercise their right to work during a strike. UFCW union bosses ordered an estimated 8,000 King Soopers workers out of work in January, but as a Foundation legal notice informed workers at the



UFCW union officials threatened to fine King Soopers employee Nick Hall almost \$1,000 just because he kept at his job during a strike. Foundation litigation ended the demands.

time, employees have the legal right to rebuff union boss strike orders, and non-member employees cannot be legally fined by the union.

Union bosses threatened Hall and Ruybal with fines of \$812 and \$3,800 respectively. This happened

despite the fact that, as the workers noted in their NLRB charges, the fines were illegal because the workers were not voluntary union members, and therefore not legally subject to internal union fines for working during the UFCW boss-ordered 10-day strike. Some 30 NLRB charges are still being investigated by NLRB Region 27, based in Denver.

Foundation Legal Aid Prompts UFCW Bosses to Drop Fine Threats

In Hall's case, the union backed down, rescinding the union's illegal fine threat in a letter dated July 27, essentially acknowledging that it broke federal law. Other workers have also successfully challenged union boss fine threats following the January strike.

With free legal representation from Foundation staff attorneys, worker Yen Chan challenged the union's authority to issue a \$3,552.48 fine, with union officials backing down rather than pursuing the fine and facing further legal action. Other King Soopers workers also successfully challenged thousands of dollars in UFCW strike fines using information provided by National Right to Work Legal Defense Foundation staff attorneys.

"Union officials backed down quickly after being caught blatantly disregarding the law in Nick Hall's case. But it shouldn't take the support of National Right to Work Foundation staff attorneys just to force union bullies to abide by federal law," commented National Right to Work Foundation President Mark Mix. "King Soopers workers are continuing to beat back illegal fines levied by UFCW union officials, even as union officials are still under investigation by the NLRB for unfair labor practice charges." ✎

Foundation Action

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The Foundation is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by abuses of compulsory unionism. All contributions to the Foundation are tax deductible under Section 501(c)(3) of the Internal Revenue Code.

Foundation Attorneys & PA Metal Workers Fight Steelworkers Union Contract Deception

Union bosses lied to workers and covertly signed forced-dues contract to keep grip on power

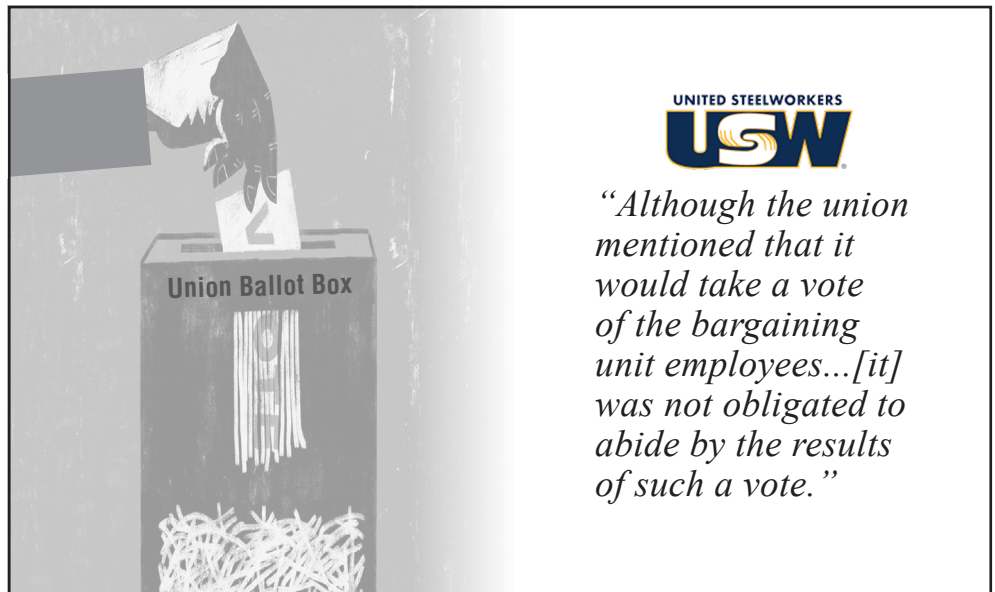
FRANKLIN, PA – Workers under the thumb of union bosses have many reasons to oppose the union's "representation." It could be they oppose a bad contract the union negotiated, or maybe it is the union's divisive political activity for candidates they oppose. Whatever the reason, workers have a right under federal labor law to vote to free themselves of such unwanted union "representation."

But federal labor law also has no shortage of workarounds for union bosses bent on clinging to their monopoly bargaining power over workers. Kerry Hunsberger and her coworkers at Latrobe Specialty Steel's Franklin, PA, facility are currently defending their right to throw out unpopular Steelworkers union officials, after the union chiefs secretly signed a contract workers had voted down twice.

Steelworkers Officials Tried to Dodge Employee Accountability

Steelworkers chiefs did so to activate a so-called "contract bar" and remain in power at the plant when they knew a decertification election was coming. Steelworkers officials held two ratification votes to make workers think they had control over whether the contract went into effect. But in reality, union officials have no legal obligation under the National Labor Relations Act (NLRA), the federal statute that governs private sector labor relations, to even conduct such a ratification vote, much less heed the workers' actual vote tally.

The pro-union boss National Labor Relations Board (NLRB) created out of whole cloth the "contract bar" policy. It immunizes union officials from employee-backed attempts to vote out a union for up to three years after union bosses and management finalize a contract -- even a contract that isn't



In NLRB documents, Steelworkers union officials openly defended their deception of employees, calling such behavior "irrelevant" to whether they should remain in power.

supported by a majority of workers.

Hunsberger's petition asking the NLRB to hold a vote to remove the union contains the requisite number of signatures under NLRB rules, but union officials argue the "contract bar" should block the election anyway.

Union Bosses Ignored Two Votes by Workers Rejecting Forced-Dues Contract

The Latrobe Specialty Steel workers first voted July 25 on the contract drawn up by Steelworkers union officials. The workers soundly rejected the contract, and Hunsberger began collecting employee signatures for a decertification petition shortly afterwards.

According to documents and transcripts filed with the NLRB, when Steelworkers union officials discovered a decertification petition was circulating, they secretly and hurriedly signed the unpopular contract on July 28, without telling the employees or the employer, in an attempt to activate the "contract bar" rule and avoid being voted out.

The slapdash contract lacked basic

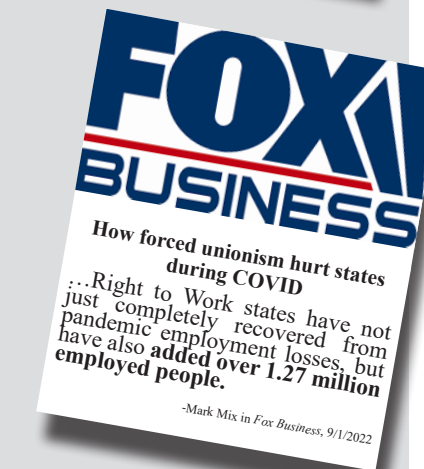
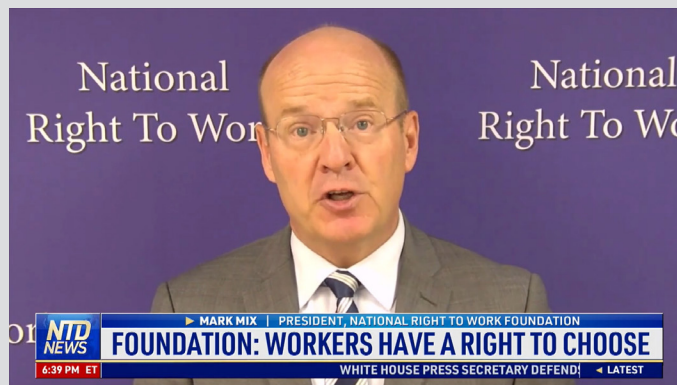
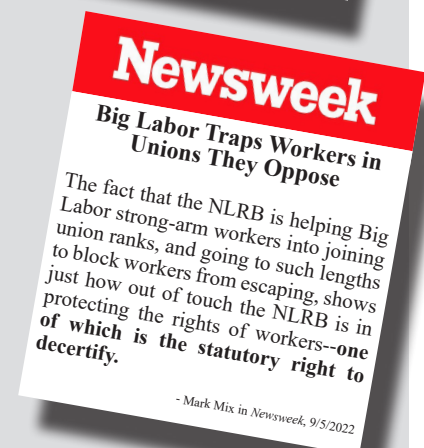
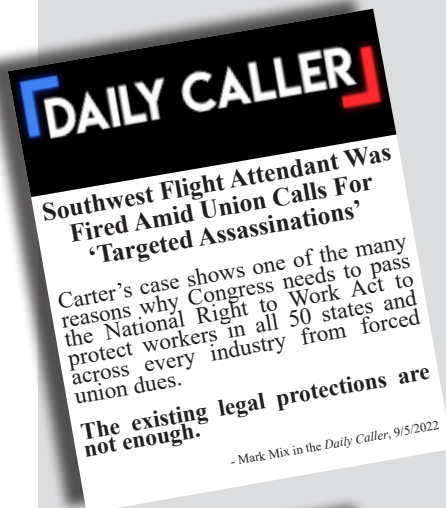
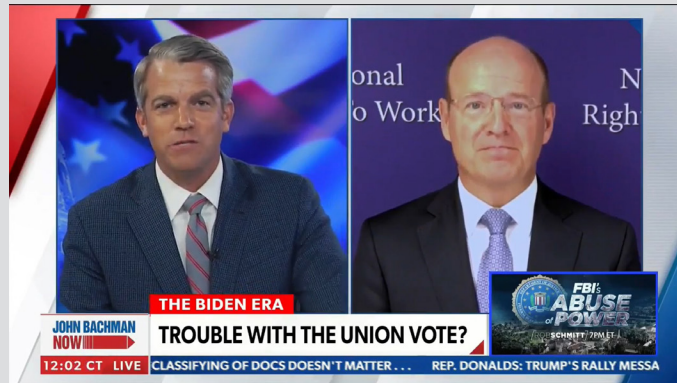
elements, like start and end dates. Even though the union now claims this contract was immediately in effect on July 28, union officials held a new employee ratification vote on August 1, encouraging workers to "ratify" the contract. But the union bosses never told the workers their "vote" was a meaningless sham because union officials had already signed the forced-dues contract in secret.

Hunsberger's decertification petition was filed at 2:00 PM on August 1, just hours before the sham contract vote occurred. As with the previous vote, the workers rejected the contract by a lopsided margin. But later that night, at around 9:00 PM, union officials suddenly announced to the employer that the contract was already in effect and the employee ratification "vote" was irrelevant because of the union bosses' covert signing on July 28.

In sworn testimony, one union boss admitted that Steelworkers union bosses execute contracts despite employees voting them down, and that union officials deceived the Latrobe workers and ignored their votes in this case "to

Foundation on Labor Day 2022: American Workers Need More Freedom

Foundation staff exposed the divide between Right to Work's pro-freedom philosophy and the coercive agenda of Big Labor and its political allies in media outlets this Labor Day. Here are some of the highlights:



See Page 6 for Mark Mix's Labor Day op-ed in the *New York Post*!

Workers Win Cash Back in Case Challenging Illegal Discrimination for Non-Union Status

Machinists union scheme sought to deny non-union workers' bonuses because they opposed union association

RIDGWAY, PA – Twelve non-union factory employees at Clarion Sintered Metals, Inc., have each received \$1,000 in back pay bonuses after being illegally discriminated against by International Association of Machinists and Aerospace Workers (IAM) Local 2448 and their employer. With free legal aid from the National Right to Work Foundation, factory worker James Cobaugh filed federal charges against Clarion and IAM as he sought justice for himself and other non-member workers subject to unlawful discrimination.

Mr. Cobaugh's charges against the union and his employer were filed on April 22, 2022, with the National Labor Relations Board (NLRB). The charges came after the union and Clarion Sintered Metals gave \$1,000 bonuses to union members, but denied them to workers who exercised their legal right not to join the union. Rather than face prosecution by the NLRB, both the union and employer have now agreed to settle the case.

In addition to the non-union employees receiving the bonuses they were previously denied as a result of the illegal discrimination, both the IAM and Clarion Sintered Metals are required to post notices that inform workers of their right to refrain from joining a union. The notices also state union officials will not maintain or enforce such discriminatory agreements going forward.

Machinists Union Bosses Already Forced Non-Union Workers to Pay Dues

Because Pennsylvania lacks Right to Work protections for private sector employees, unions can force workers to pay up to 100% of union dues as a condition of keeping their jobs. This means that Mr. Cobaugh, although not a formal IAM union member, can be forced to pay up to



IAM bosses regularly discriminate against dissident workers. In 2011, Foundation-assisted South Carolina Boeing employee Dennis Murray recounted how IAM officials tried to shutter his plant because workers there had voted the IAM out.

100% of IAM's union dues to keep his job at Clarion Sintered Metals.

Even in Right to Work states, under federal law union bosses are granted the power to impose "representation" on individual workers against their will, including forcing non-member workers under union monopoly contracts they oppose. By stripping workers of their right to bargain for their own terms and conditions of employment, individual workers by law are prohibited from negotiating for themselves with their employers for better conditions.

Forced Union Monopoly 'Representation' Long Used to Discriminate

Union officials frequently use these government-granted powers to harm certain workers, for example those workers who, based on their productivity, would otherwise earn performance bonuses or higher compensation. Although union officials can impose one-size-fits-all monopoly contracts that favor some workers over others, there are some limits on how union monopoly

powers can be used to discriminate.

The U.S. Supreme Court imposed these limits after union officials wielded their powers to negotiate and enforce racially discriminatory contracts (*Steele v. Louisville & N.R. Co. et al.*). Explicitly discriminating against workers who exercise their legally protected right to not formally join a union and not be subject to internal union rules, as the IAM officials did in this case, has also long been illegal.

"This situation highlights how workers less knowledgeable of their legal rights are susceptible to blatantly illegal tactics of power-hungry union bosses," commented National Right to Work Foundation Vice President Patrick Semmens. "Mr. Cobaugh courageously stood up to the union's unlawful actions, not only for himself, but also for the other non-member workers subjected to this illegal discrimination." ✚

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NEW YORK POST

SEPTEMBER 5, 2022

OPINION

Labor Day Is No Reason to Celebrate Union Bosses' War on Workers' Rights

Mark Mix *Special to the New York Post*

Labor Day should be about celebrating the hard work and determination of America's workers. Every year, however, Big Labor and its allies in Congress and in statehouses across the country manipulate the holiday to portray as "pro-worker" their schemes that really empower union bosses at the expense of rank-and-file workers.

The truth is, central to Big Labor's political agenda are more powers for union officials to wield against workers who won't voluntarily affiliate with a union. Nowhere is this more apparent than in the actions of President Joe Biden's administration.

Self-styled "union guy" Joe Biden regularly touts his support for union bosses' top legislative priority, the PRO-Act -- whose signature provision is the repeal of all 27 state Right to Work laws. That would force millions more workers across the country to subsidize the agendas of union bosses or else be fired.

Among the PRO-Act's other provisions is an imposition of the controversial "card check" method of imposing union power. Instead of letting workers have the final say on whether a union should be in their workplace by casting ballots in secret, the PRO-Act would let union officials bypass NLRB elections by submitting "union cards" collected by union organizers using pressure or intimidation tactics that would be prohibited in a secret-ballot election.

Union officials know that whether a worker will sign a card in the presence of one or more union organizers has little to do with how they'd vote in private. Even the AFL-CIO's "Guidebook for Union Organizers" admitted that often workers sign cards simply to "get the union off my back" and avoid additional harassment. During "card check" drives, workers have even reported union organizers resorting to bribes, threats and lies to get the cards signed so unionization can be imposed on the entire workplace.

The PRO-Act also targets freelance workers and independent contractors, whose current status means they can't be subjected to monopoly unionization under federal labor law. By redefining them as traditional employees, it would destroy the work flexibility that is a big draw for many who choose such work. That is a feature, not a bug, for organizers who would then be able to impose one-size-fits-all forced-dues union contracts on millions more Americans.

The bill's union-boss-power grabs at the expense of

individual workers' rights don't stop there. Union officials would also be entitled to demand workers' personal contact information during a unionization drive (even over a worker's objections), to block workers' ability to hold decertification votes to remove unions that are opposed by a majority of workers and even to call in government bureaucrats to impose forced-dues union contracts through binding arbitration over the objections of both workers and employers.

The PRO-Act remains stalled in the Senate, but this hasn't stopped Team Biden from moving to impose much of it by executive fiat. The former union lawyer who is now the powerful general counsel at the National Labor Relations Board is already pushing to implement multiple PRO-Act provisions, including "card check" by effectively making it illegal for employers to rebuff union organizers' demands for recognition based solely on union cards.

Time and time again, union officials and their allies in the administration prioritize union-boss power even though it's workers opposed to union affiliation whose rights are diminished. This vision is not pro-worker, and we certainly shouldn't be celebrating it on Labor Day.

Union officials weren't always such devotees of government-granted coercion. Samuel Gompers, the founder of the American Federation of Labor (now the AFL-CIO), declared in a 1924 speech to union delegates, "I want to urge devotion to the fundamentals of human liberty -- the principles of voluntarism. No lasting gain has ever come from compulsion."

Gompers understood, as do the eight in 10 Americans who support Right to Work, that when union affiliation and financial support are voluntary, union officials must prove their worth to individual workers.

Meanwhile, when workers must pay up or else be fired, rank-and-file workers' interests inevitably take a back seat to maintaining the political influence needed to perpetuate and expand the government-granted compulsion that keeps dues flowing.

So this Labor Day, don't buy into the union propaganda that pro-union-boss is pro-worker. Support Right to Work and respect workers' individual rights to decide whether or not they want to affiliate with a union.

*Mr. Mix is president of the National Right to Work Legal Defense Foundation.
(Reprinted from the New York Post)*

Lifeguards Work to Resuscitate Their *Janus* Rights at Supreme Court

continued from page 1

dues in the public sector, but even violate the Supreme Court's now-overturned 1977 decision in *Abood v. Detroit Board of Education*. *Abood* let union officials force dissenting public sector employees to pay a portion of union dues as a condition of employment.

"Maintenance of membership" requirements -- which force public employees to pay full union dues often for years after they try to resign from the union -- are worse than anything permitted by *Abood*, Foundation staff attorneys argue.

The petition also takes to task CSLEA union bosses' paltry defense that the lifeguards somehow voluntarily agreed to the "maintenance of membership" scheme. In *Janus*, the Supreme Court ruled that union officials can only take dues from a public employee's paycheck if that employee gives a "clear and compelling" waiver of *Janus* rights.

Foundation attorneys point out that the CSLEA union's dues deduction forms contained only a



Veteran Foundation staff attorney Bill Messenger argued the *Janus* case at the Supreme Court. He's now asking the Justices to protect *Janus* rights for a group of California lifeguards.

"vague reference" to an unexplained limit on when withdrawal from membership is permitted, which is not even close to satisfying *Janus*' waiver requirement.

"A vague reference to unspecified limitations in 'the Unit 7 contract and State law' does not establish the Lifeguards contractually consented" to union membership for four years, the petition says.

Supreme Court Must Intervene to Stop Spread of Unconstitutional Restrictions

The petition for Savas and his fellow lifeguards emphasizes how crucial it is for the Supreme Court to strike down cumbersome "maintenance of membership" restrictions, pointing out that

See 'New Foundation' page 8

Foundation Fights Steelworkers Union Bosses' Snub of Worker Votes

continued from page 3

protect the integrity of the union." Apparently the Steelworkers bosses' lust for monopoly bargaining power and compulsory union payments takes precedence over the actual wishes of the rank-and-file workers union officials purport to "represent."

'Contract Bar' Encourages Unions to Force Through Unpopular Contracts

"Steelworkers union bosses drew up a contract that my coworkers and I hated, so naturally we wanted them out of our workplace and out of our pocketbooks. But to add insult to injury, they apparently didn't even think they owed us a

duty of honesty," said Hunsberger.

"This entire ordeal has been incredibly frustrating and we are grateful for the help of the National Right to Work Foundation in defending our right to vote the union out."

Kerry Hunsberger's Foundation-backed brief defending her and her coworkers' rights states that the Steelworkers' contract ploy is "nothing more than a smokescreen, concocted by a desperate and unpopular union to entrench itself and bar employee free choice" under federal law.

"The 'contract bar' arbitrarily blocks, often for years, workers' statutory right under federal law to vote out union officials they oppose. Worse, it encourages union

officials to cynically impose a contract at all costs, especially when union bosses know rank-and-file workers would see such a contract as a reason to get rid of so-called union 'representation,'" commented National Right to Work Foundation Vice President Patrick Semmens. "This case presents an easy choice for the NLRB: defend the rights of rank-and-file workers, or side with Steelworkers union officials, who repeatedly misled those workers and disregarded their votes simply to protect union power. The case also demonstrates that there is no such thing as 'union democracy' in America." 🇺🇸

New Foundation *Janus* Case Awaits High Court Review

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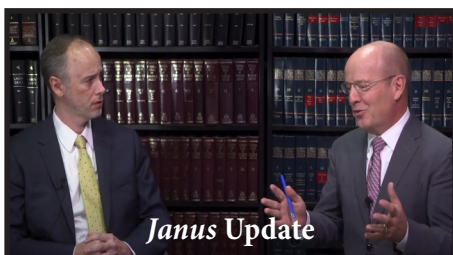
California unions and legislators will continue to force public employees to remain formal union members and pay full dues as a condition of employment if the schemes are left unchecked.

“Other states likely will follow suit, such as Pennsylvania, whose laws also authorize maintenance of membership requirements,” the brief states.

Challenged Scheme Gives Union Bosses Control of Workers’ *Janus* Rights

“Maintenance of membership’ restrictions give union officials complete control over when public employees can exercise their rights to end union membership and cut off union dues deductions,” observed National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. “The Supreme Court must intervene in these lifeguards’ case to protect the First Amendment rights of all American public sector employees, and prevent union bosses and their political allies from replicating across the country these patently unconstitutional restrictions.” ✎

Watch Bill Messenger and Mark Mix discuss the Foundation’s latest *Janus* battles:



Scan the QR code to the right or visit www.nrtw.org/januscontinues



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter,

Your Foundation doesn’t just litigate hundreds of cases a year challenging forced unionism through legal action. We’re also exposing the injustices workers face from coercive unionism in the court of public opinion.

For example, as Big Labor attempts to hijack Labor Day to argue for more forced-unionism powers for union bosses, Foundation staff work hard to counter that propaganda and instead argue that honoring American workers must include protecting them from being forced to fund a union against their will.

This year our Labor Day media blitz included placing op-eds in over 30 news outlets, highlighting in major publications the harms of compulsory unionism and the need for Right to Work. Foundation experts also conducted TV and radio interviews that were broadcast on hundreds of stations.

You can take a look at just a few of the outlets where your Foundation received coverage this year -- including Fox Business, *Newsweek*, and The Daily Caller -- on page 4 of this newsletter, along with my op-ed on page 6 published by the *New York Post* about how Big Labor’s coercive agenda undermines the freedom of rank-and-file workers.

Outreach efforts by your Foundation on Labor Day, and throughout the year, play an important role in educating the public and shaping the public debate about Right to Work.

Further, this cost-effective earned media coverage informs American workers about existing precedents that can help protect them from unwanted union affiliation and ensures that they know they can turn to the National Right to Work Foundation’s team of experts for free legal assistance in vindicating their rights.

Of course none of these efforts -- whether it is exposing union boss misdeeds in the press or attacking their coercive powers through strategic litigation -- would be possible without your faithful support for your National Right to Work Foundation.

Thank you for all that you do to support the Foundation and advance the Right to Work for all Americans.

Sincerely,