



Foundation *Action*

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

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Foundation-Backed Workers Fighting for Freedom from Unwanted Union Bosses

Victories come as Biden NLRB advances rule to block worker decertification votes

WASHINGTON, DC – With National Right to Work Foundation staff attorneys aiding workers across the country in exercising their right to vote out union officials they don't want, President Biden's National Labor Relations Board (NLRB) is moving to undermine such efforts. The Biden NLRB is also fast-tracking policies that let union bosses sweep to power without even giving workers any chance to vote.

The Biden NLRB is pulling out all the stops to mandate the so-called "card check" process while eliminating workers' ability to ask for a secret ballot vote. Card check lets union officials bypass the traditional union election process and pressure workers into signing union authorization cards that are later counted as "votes" for the union. Workers often report threats, intimidation, unwanted home visits, and union deception about the true meaning of the cards as part of a card check campaign.

The latest attack on workers' election rights is the Biden NLRB's pending rule to overturn Foundation-backed reforms to the election process adopted by the NLRB in 2020. The 2020 reforms, known as the Election Protection Rule, give workers a window of opportunity to petition for a secret ballot vote after a union imposes itself on workers without a secret ballot election. Foundation staff attorneys first established this protection in the 2007 *Dana Corp* case, and workers all over America



Seattle Mariners pro shop employees slammed UFCW union bosses out of T-Mobile Park by taking advantage of Foundation-backed rules that make union decertification votes easier. But the Biden NLRB is attacking those reforms.

used it until the Obama NLRB overturned *Dana* in 2010.

Seattle Mariners Employees Overwhelmingly Vote to Reverse UFCW Card Check

Since the 2020 Foundation-backed reforms reinstated the *Dana* process, workers have again used it to demand secret ballot elections to challenge union "representation" imposed through coercive card checks. In just the past few months, Foundation attorneys have assisted multiple groups of workers in exercising this freedom, and will continue to do so even in the face of Biden NLRB opposition.

This year, employees of the Seattle Mariners' MLB pro shop obtained free Foundation legal aid to defend their effort to remove the United Food and Commercial Workers (UFCW) union, which had

previously been installed through card check.

Regional NLRB officials granted the workers' petition for a vote to remove the union based on the Election Protection Rule. But union

See '*Foundation Fights Biden*' page 7

IN THIS ISSUE

- 2 Foundation Asks Supreme Court to Take on Widespread Janus Violations
- Karma Catches Up to SEIU
- 3 Officials as Philly Coffee Workers Oust Union
- 4 Labor Day 2023: National Right to Work in the News
- Foundation Lawsuit: Biden NLRB Structure Violates the U.S. Constitution
- 6 UAW Strike: Foundation Notifies Workers of Their Right to Rebuff UAW Boss Strike Order
- 8

Foundation Asks Supreme Court to Take on Widespread *Janus* Violations

Brief: Pending case should be used to underscore need to obtain workers' consent to dues

WASHINGTON, DC – The National Right to Work Foundation's victory in the 2018 *Janus v. AFSCME* Supreme Court case set a monumental First Amendment precedent. In *Janus*, the Justices recognized that no public sector worker can be forced to pay union dues as a condition of employment, and that unions cannot deduct union dues from a public sector worker's wages unless that worker waives his or her *Janus* rights.

Now the Foundation is asking the U.S. Supreme Court to, five years after *Janus* was issued, take another case to clarify and fortify the *Janus* precedent against numerous misinterpretations by greedy union officials, union-backed state politicians, and, most worryingly, some lower court judges.

Alaska Takes Lead on *Janus* Rights Only to Face Union Boss Resistance

The Foundation's brief asks the Supreme Court to weigh in on an Alaska lawsuit that started when union officials sought to nullify Alaska state officials' attempt to fully protect the First Amendment rights



In 2019, Alaska Gov. Mike Dunleavy took proactive steps to protect *Janus*, but dues-hungry ASEA union bosses fought his actions all the way up to the Supreme Court.

of public employees. Union officials challenged the state's arrangement which ensured that the state didn't deduct dues from any public employee who had not knowingly waived their rights under *Janus*.

After the *Janus* decision, Alaska Gov. Mike Dunleavy issued an executive order requiring the state to obtain proof of consent from workers each year to deduct union dues from their paychecks. The requirement was designed to prevent union bosses from deducting dues money from the

wages of a worker who didn't fully understand their legal rights under *Janus*. Many workers, for example, may have authorized dues deductions years before the Supreme Court recognized that mandatory payments to unions as a condition of government employment violate the Constitution.

Unwilling to comply with even this modest check on their power to deduct union dues directly from government employees' paychecks, Alaska State Employees Association (ASEA) officials battled the State of Alaska in state court. Eventually, ASEA union lawyers were able to get the state's highest court to block the arrangement. But the Supreme Court has the ability to fix the Alaska State Supreme Court's misinterpretation of *Janus*.

Following the State of Alaska's petition asking the U.S. Supreme Court to hear arguments in the case, Foundation attorneys filed a legal brief of their own, urging the Justices to uphold Alaska's safeguards on *Janus* and correct the misinterpretations of *Janus* made by an increasing number of courts and state governments around the country.

Brief: States and Courts Are Ignoring *Janus*, Need to Be Reined In

The Foundation's argument notes that, after the *Janus* decision, at least seventeen states either changed their laws to require government employers to enforce union boss-invented restrictions on when employees can stop union dues deductions, or enforced dues deduction restrictions already on the books. Both lead to unacceptable restraints on public sector workers' *Janus* rights, the amicus brief argues.

The amicus brief further contends that lower courts, especially the Ninth Circuit Court of Appeals

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.

Karma Catches Up to SEIU Officials as Philly Coffee Workers Oust Union

Good Karma Café employees vote out SEIU officials also opposed by many Starbucks workers

PHILADELPHIA, PA – Workers United (WU), the same union that runs Starbucks Workers United (SBWU) unions across the country, has been the subject of considerable media attention for its top-down organizing campaign against Starbucks. Little do people know that WU's puppet masters at the Service Employees International Union (SEIU) have expended millions of dollars in hiring union activists to agitate for union control at these shops -- including "salts," paid union agents that pose as normal employees but often quit soon after they've achieved their actual goal of installing the union.

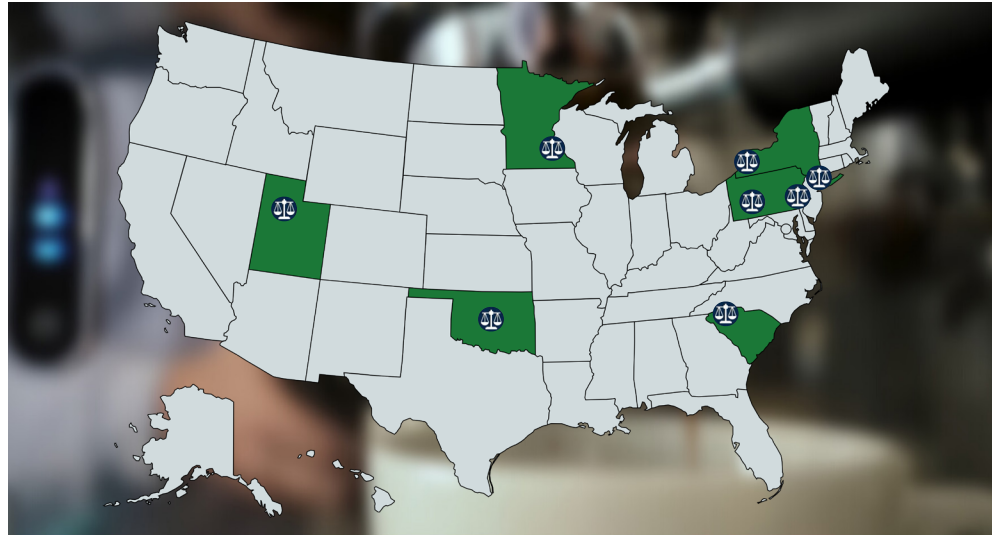
However, aggressive and deceptive WU union tactics did not stop Marco Camponeschi and his coworkers at two locations of Good Karma Café in Philadelphia from voting out the union with free legal aid from the National Right to Work Legal Defense Foundation.

Camponeschi submitted a petition in August asking the National Labor Relations Board (NLRB) Region 4 in Philadelphia to hold a vote to remove the union. The petition contained signatures from enough of his colleagues to prompt the election, and this September, the Good Karma employees voted to send WU officials packing.

Signs of SEIU "Salt" Tactics in Philly

"After the Workers United union was installed, there was a lot of employee turnover, and we soon found ourselves very short-staffed," Camponeschi commented before the vote. Employee turnover after a union's installation often indicates "salts" may have been present.

Pennsylvania, because of its lack of Right to Work protections for its private sector employees, permits union officials to make deals with employers that require workers to pay union dues just



SEIU officials' aggressive campaign targeting coffee shop employees across the country for union control is fast unravelling, as workers nationwide are now exercising their right to vote unions out, often with Foundation aid.

to stay employed. So by nixing the union, Camponeschi and his coworkers ended both forced union representation and the threat of forced dues. In states with Right to Work laws, in contrast, union membership and all union financial support are strictly voluntary and the choice of each individual worker.

Coffee Workers Leading Nationwide Charge to Boot Out Unwanted Unions

Since the beginning of this year, Starbucks employees in Manhattan, NY; Buffalo, NY; Pittsburgh, PA; Bloomington, MN; Salt Lake City, UT; Oklahoma City, OK; and Greenville, SC, have all sought free Foundation legal aid in pursuing decertification efforts against Workers United union bosses at the NLRB.

Outside of coffee shops, union decertification efforts are becoming much more common. Currently, the NLRB's data shows a unionized private sector worker is far more likely to be involved in a decertification effort than their nonunion counterpart is to be involved in a unionization campaign. NLRB statistics also

show that the number of worker-filed decertification petitions has increased each of the last three years.

"Workers United union officials seem to have a penchant for trying to expand their control over employees without regard for the employees' interests," commented National Right to Work Foundation Vice President and Legal Director William Messenger. "So it's unsurprising that coffee employees nationwide are banding together to vote Workers United out."

"While we're glad the Good Karma employees were able to successfully exercise their right to oust the unwanted union, it should be noted that NLRB officials across the country are blocking Starbucks employees from exercising that same right at the behest of Workers United union officials," Messenger added. "Workers should be allowed to vote out unwanted unions, and the NLRB should not stifle that right based on union officials' whims. That's especially important as the Biden NLRB seeks to make several rule changes which will make it harder for workers to vote out union officials."✚

Labor Day 2023: National Right to Work

The Detroit News

Mix: How right-to-work repeal affects workers

Restoring union officials' forced-dues powers threatens Michigan's economy... Union bosses and their allies may think it is all worth it because forced-dues power means more money in union bosses' coffers... But, next year and in 2026, voters will get to choose between pro-right-to-work candidates and those who put union special interests ahead of the wishes of most Michiganians.

— Op-ed in *The Detroit News*, September 3, 2023



NEWSMAX

3:02 ET LIVE

UAW THREATENING TO STRIKE IF DEMANDS NOT MET
UP 26 POINTS ON 'TOO OLD' BIDEN... PAT SAJAK'S HILLSDALE COLLEGE A HUB FOR

NEW YORK POST

CUNY professors' free-speech case could be next blow to Big Labor

Janus went a long way toward reducing union bosses' stranglehold over public workers' rights and their inordinate influence over government. But it's clear that, to fully protect government workers' First Amendment rights, union officials must not be able to force public workers under their monopoly "representation."

— Op-ed in the *New York Post*, September 3, 2023

Newsweek

Big Labor Wants Power for Itself—Not Worker Representation

To eliminate the frustration of having to get and maintain worker support, union bosses want to enforce a practice called "sectoral bargaining." Instead of going from location to location and fighting for worker support, the government could simply declare union officials the "representatives" of workers in an entire industry... sectoral bargaining would be a disaster.

— Op-ed in *Newsweek*, September 1, 2023

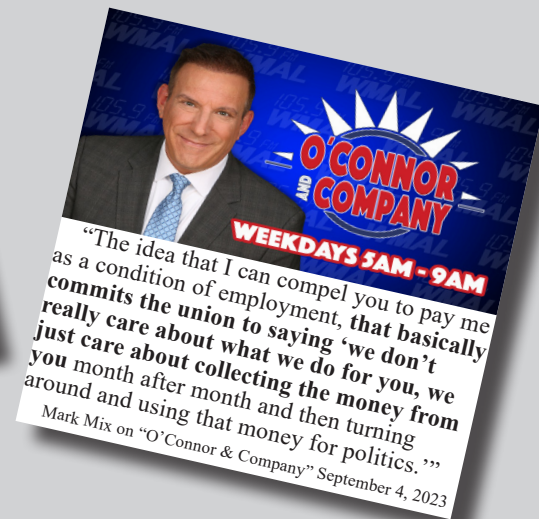
THE HILL

Biden's labor board wants to trap workers in unions they oppose

Since it takes a majority of workers in a given workplace to support a union before monopoly union representation can be imposed, union organizers face a basic math problem — one that explains why only 6 percent of private-sector workers are unionized today.

Yet rather than consider ways of making unionization more attractive to rank-and-file workers, politically-connected union bosses have a different plan: Rig the rules to force more workers into their ranks, willing or not.

— Op-ed in *The Hill*, September 4, 2023

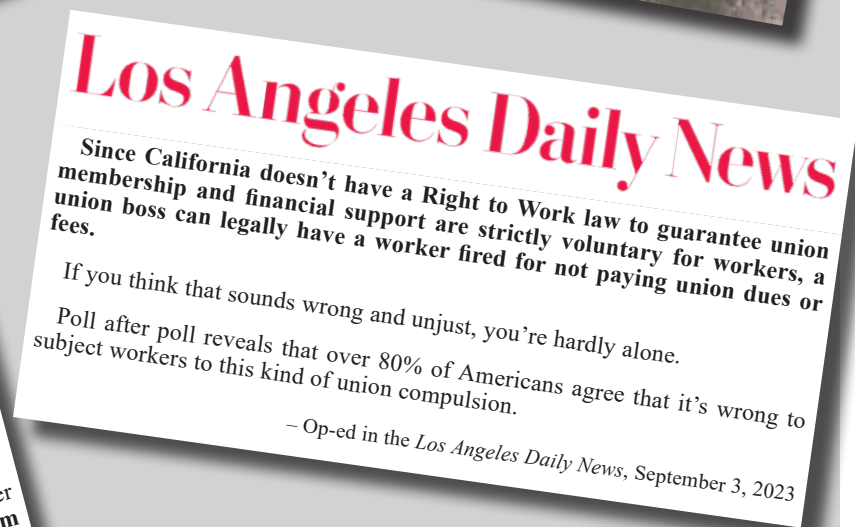
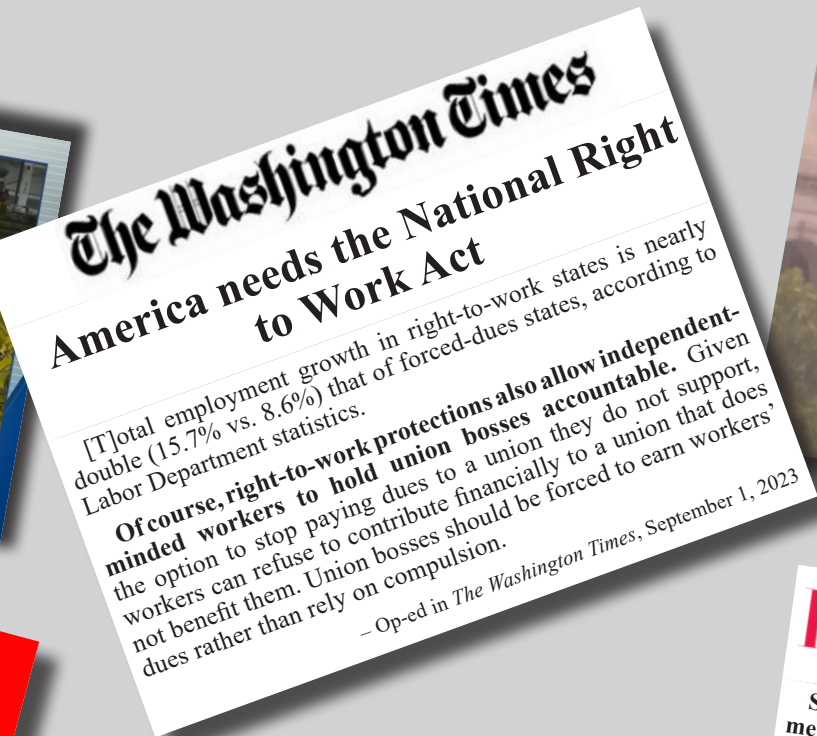


"The idea that I can compel you to pay me as a condition of employment, that basically commits the union to saying 'we don't really care about what we do for you, we just care about collecting the money from you month after month and then turning around and using that money for politics.'"

Mark Mix on "O'Connor & Company" September 4, 2023

Work in the News

Foundation Legal Information staff got the Right to Work message out in media outlets across the country for Labor Day 2023. Here are some of the highlights:



Foundation Lawsuit: Biden NLRB Structure Violates the U.S. Constitution

Groundbreaking suit filed for Starbucks employee who was denied vote to oust unwanted union bosses

WASHINGTON, DC – The National Labor Relations Board (NLRB) is supposed to protect the right of workers to freely choose whether to associate with a union or not. The NLRB is also charged with holding unions and employers accountable when they violate worker rights. Too often, however, it has simply acted as an agency that generates policies to entrench union bosses' power over workers while shielding union bosses from any kind of liability.

A new federal lawsuit from a National Right to Work Foundation-backed Starbucks employee, currently pending at the D.C. District Court, could upend the federal agency and result in a ruling that the current Labor Board's structure violates the Constitution.

Employee Challenges NLRB Bureaucrats' Protections from Presidential Removal

Ariana Cortes, a worker at the Buffalo, NY, "Del-Chip" Starbucks branch, hit the NLRB with the groundbreaking lawsuit in October, contending that the federal agency's current structure violates the separation of powers mandated by the Constitution.

Cortes' suit follows Foundation attorneys' defense of her and her coworkers' petition requesting a vote to remove Starbucks Workers United (SBWU) union officials from their workplace. Regional NLRB officials dismissed Cortes' majority-backed petition based on SBWU allegations against Starbucks management that have no proven connection to Cortes and her coworkers' desire for a union decertification vote.

Cortes' lawsuit argues that because NLRB members cannot be removed at-will by the President, the NLRB's structure violates Article II of the Constitution. Under Article II, the



Starbucks employee Ariana Cortes' Foundation attorney, Aaron Solem (right), is making a cutting-edge argument targeting the NLRB's lack of accountability. Scan the QR code below to watch him explain what the suit means for worker freedom.

lawsuit contends, the President must have the power to remove officials that exercise substantial executive power.

Because the NLRB enforces federal labor law, manages union elections, and can issue legally binding rules and regulations, the lawsuit contends that the agency exercises substantial executive power. Therefore, it falls within the scope of the President's power to remove officials at will. However, the National Labor Relations Act (NLRA), the law that established the NLRB, restricts the President's ability to remove Board members except for neglect of duty or malfeasance.

"[T]hese restrictions are impermissible limitations on the President's ability to remove Board members and violate the Constitution's separation of powers. Thus, the Board, as currently constituted, is unconstitutional," the complaint states.

Lawsuit: Unconstitutional NLRB Proceedings Must Stop

Cortes' new federal lawsuit seeks a declaration from the District Court that the structure of the NLRB as it currently exists is unconstitutional.

"For too long the NLRB, especially the current Board, has operated as a union boss-friendly kangaroo court, complete with powerful bureaucrats who exercise unaccountable power in violation of the Constitution," commented National Right to Work Foundation Vice President and Legal Director William Messenger. "The NLRB's operation outside constitutional norms is easily exploited by Big Labor."

"But as the story of Ms. Cortes shows, the NLRB's unchecked power creates real harms for workers' rights, especially when workers seek to free themselves from the control of union bosses they disagree with," Messenger added. †

Watch Foundation Legal Director William Messenger discuss Ms. Cortes' unprecedented suit with her attorney, Aaron Solem.

Scan the QR code or visit www.nrtw.org/cortes



Alaska Case Could Fortify *Janus* Protections

continued from page 2

with jurisdiction over Alaska, have misinterpreted *Janus* by not mandating government employers notify public workers of their *Janus* rights before taking union dues from their paychecks. For a waiver of one's rights to be effective, a person must know what those rights are -- just as police officers "Mirandize" suspects they arrest by informing them of their "right to remain silent."

Union Bosses Value Dues-Funded Politicking Over Public Servants' Rights

The amicus brief also points out that the Ninth Circuit has issued decisions that free public employers from any obligation to prove that




Mark Janus, seen here with former IL Gov. Bruce Rauner, won unprecedented protections with Foundation legal aid. Now the Foundation is asking the Supreme Court to fortify Janus.

union bosses obtained authentic consent from workers before dues are taken from their wages -- opening the door for forged or fake dues deduction cards.

"Unless the Court grants review and breathes new life into *Janus*' waiver requirement, unions

and their government allies will continue to severely restrict the right of millions of employees to stop subsidizing union speech," the amicus brief concludes.

"Public sector union bosses, who prize their own dues-funded political influence far above the individual rights of the employees they claim to 'represent,' have tried everything in their power to dodge the *Janus* ruling and keep siphoning money from workers," commented National Right to Work Foundation Vice President Patrick Semmens. "The Supreme Court has an opportunity in the State of Alaska's case to set the record straight and ensure that workers' free association rights can't simply be molded according to their own schemes." 

Foundation Fights Biden NLRB's Moves to Trap Workers in Union Ranks

continued from page 1

lawyers argued on appeal that the Mariners employees' election should be thrown out because of the so-called "voluntary recognition bar," a pre-Election Protection Rule restriction that blocked workers from having a vote for up to a year or more after a card check.

The union's appeal was dismissed based on the Election Protection Rule, and Mariners pro shop employees voted to send the UFCW packing by well over 80 percent.

California Paramedics Fight with Foundation Aid to Resuscitate Election Rights

Also on the West Coast, Michael Radan and his fellow paramedics and EMTs with the Manteca District Volunteer Ambulance Service in Groveland, CA; and Sonora, CA, petitioned for a secret ballot union decertification election shortly after Steelworkers union officials had swept themselves into the workplace via card check.


In August, Radan and his fellow paramedics and EMTs voted to remove the union. While Foundation attorneys are now defending Radan and his coworkers' decision from election objections levied by Steelworkers union bosses, the Election Protection Rule's safeguards at least permitted the employees to vote.

As Decertifications Increase, Biden NLRB Makes Worker Free Choice Last Priority

Before the Rule, union officials could often use unproven or unrelated allegations of employer wrongdoing (also called "blocking charges") to halt an election before ballots were even cast.

"That workers petition for secret ballot votes after union bosses make specious claims of majority support via card check shows that a card check isn't truly reflective of workers' will. The AFL-CIO's own organizing manuals admit that

workers often sign cards just to get union organizers 'off their backs,'" commented National Right to Work Foundation President Mark Mix.

"All of this points to why the Election Protection Rule is so important -- Big Labor should not have the power to subordinate workers' free choice to union bosses' thirst for power and dues revenue," Mix added. "But as the Biden NLRB seeks to confer ever greater powers on union bosses, Foundation staff attorneys will continue to defend workers opposed to unionization, including by challenging the Biden NLRB in federal court." 



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UAW Strike: Foundation Notifies Workers of Their Right to Rebuff UAW Boss Strike Order

This September, United Auto Workers (UAW) top boss Shawn Fain ordered a strike against all of the "Big Three" American car manufacturers for the first time in history.

The command created vast uncertainty for thousands of autoworkers across the country. The National Right to Work Foundation issued a legal notice as the strike began, informing workers of their rights to end their union memberships and return to work to support themselves and their families.

Right to Work experts also appeared on television shows across the country to explain these rights, and to remind Americans that UAW bosses' agendas frequently don't align with workers' interests, as evidenced by the federal corruption scandal that has already resulted in the convictions of 11 UAW officials, including two former union presidents. ¹

**Watch Foundation Experts
Break Down the UAW
Strike on:**



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right or visit
[www.nrtw.org/
uawstrike](http://www.nrtw.org/uawstrike)



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter,

"Union Guy" Joe Biden's National Labor Relations Board is proving to be even more radical than even the infamously pro-Big Labor Obama Labor Board.

Far from being a neutral arbiter of federal labor law, the current NLRB is tossing aside precedent after precedent to help expand union bosses' coercive power, undermining not just the rights of employers but especially the rights of the overwhelming majority of workers who want nothing to do with union affiliation.

These workers are under attack, and as you'll read in this issue of **Foundation Action**, your National Right to Work Legal Defense Foundation is helping them fight back.

This means assisting employees across the country navigate the byzantine process for removing unwanted union boss so-called "representation" -- facing down not only union lawyers but overcoming the Biden NLRB's biased rules.

You can read (page 1 and page 3) about how Foundation attorneys are assisting hardworking Americans across the country -- ranging from coffee shop baristas to EMTs -- to throw off the chains of compulsory unionism and join the groundswell of independent-minded employees nationwide who oppose forced-dues compulsory unionism.

But we're not just assisting independent-minded workers in cases *at the Biden NLRB*; Foundation staff attorneys are on the lookout for cases to bring *against the Biden NLRB*.

In fact, Foundation attorneys recently filed a groundbreaking federal lawsuit (page 6) challenging the constitutionality of the entire NLRB structure on behalf of a Starbucks worker currently trapped in union ranks despite a majority of her coworkers asking for a vote to remove the union.

Foundation attorneys have decades of experience fighting -- and beating -- unscrupulous union lawyers and pro-Big Labor bureaucrats in Washington, and with extreme union partisans running the NLRB, that work is more important than ever.

Of course, the Foundation can only file these critical cases with the ongoing support of folks like you. So thank you for joining us in this fight.

Sincerely,