



Foundation *Action*

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Seattle Uber and Lyft Drivers File Federal Lawsuit to Block Unprecedented Expansion of Forced Unionism

Seattle scheme would force drivers who use popular ride-hailing apps into Teamsters forced-dues ranks

SEATTLE, WA – In March, 11 independent drivers filed a federal lawsuit to block the Seattle City Council's controversial ordinance designed to impose forced unionism on independent ride-sharing and for-hire drivers. These drivers use the popular Uber and Lyft apps to pick up customers. Dan Clark, lead plaintiff in the suit, is an independent driver who picks up riders through both the Uber and Lyft applications.

The drivers filed their suit against the City of Seattle in the U.S. District Court for the Western District of Washington with free legal representation by staff attorneys from the National Right to Work Legal Defense Foundation and the Washington state-based Freedom Foundation. The drivers' federal lawsuit argues that the Seattle ordinance is preempted by the National Labor Relations Act, violates federal driver privacy protections, and that imposing union representation and forced dues on them violates their First Amendment rights of free speech and freedom of association.

Seattle Council Targets Independent Contractors

In 2015, the Seattle City Council passed an ordinance that targeted for compulsory unionization independent



Eleven independent drivers who partner with Uber and Lyft filed a federal lawsuit challenging a Seattle ordinance to forcibly unionize over 9,000 drivers.

drivers who find riders through apps like Uber and Lyft.

The ordinance mandates that companies turn over private personal contact information for drivers to union organizers, even for those who have shown no interest in unionization or actively oppose the union. In addition, should a union successfully “organize” drivers, city administrators are empowered to impose a union contract on the drivers and companies if an agreement isn't reached within 90 days of the unionization certification.

The bill further authorizes unionization through the coercive and unreliable “card check” system as opposed to a secret ballot vote. It also allows union

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Foundation Case to End Public Sector Forced Dues Moves to High Court

After Seventh Circuit Court of Appeals ruling, U.S. Supreme Court could agree to hear case this fall

CHICAGO, IL – The days of forcing public employees to pay union dues or fees just to have the privilege to work for their own government may be numbered. On March 21, the Seventh Circuit Court of Appeals upheld the decision of the Illinois district court which ruled that the *Abood v. Detroit Board of Education* precedent applies to *Janus v. AFSCME*. The decision by the Seventh Circuit, which was expected, allows for Foundation staff attorneys to file a petition for a writ of *certiorari* asking the United States Supreme Court to take the case.

Janus v. AFSCME is a lawsuit brought by Illinois state employees, represented by staff attorneys from the National Right to Work Foundation and the Liberty Justice Center, that challenges the mandatory payment of union fees by Illinois public employees.

Janus stems from a 2015 lawsuit filed by Illinois Governor Bruce Rauner in federal court that argued that the First Amendment is not compatible with forced union fees.



Mark Janus' quest to end forced union dues for all public-sector workers is now just one step away from the U.S. Supreme Court.

The federal district court ruled that Governor Rauner lacked standing to be part of the suit but allowed the state employees, represented by Foundation staff attorneys, to intervene in the case and move it forward. The district court, citing *Abood*, dismissed the case. With the Seventh Circuit Court of Appeals ruling, the case has now cleared the last hurdle, allowing the Foundation to appeal the


case to the United States Supreme Court.

Last spring it appeared the Supreme Court was ready to strike down forced union fees for public employees in *Freidrichs v. California Teachers Association*, a similar case that was based on the 2014 Foundation Supreme Court victory *Harris v. Quinn*. Most legal observers agreed that Justice Antonin Scalia was the fifth and deciding vote in the case, but his untimely death resulted in a deadlocked court that left in place forced union fees for the time being.

Justice Gorsuch Likely Decisive Vote on Forced Dues Constitutionality

Now, with the confirmation of Judge Neil Gorsuch to the Supreme Court, there is a full panel of nine justices that could hear the case as soon as this fall. A ruling in favor of the plaintiffs in *Janus v. AFSCME* would free all public employees nationwide from being forced to pay union fees as a condition of employment.

National Right to Work Foundation President Mark Mix commented, "The Seventh Circuit's ruling is no surprise but simply the required result that allows our next step forward in the journey to end forced unionism for public employees nationwide. It is outrageous that this violation of the First Amendment rights of hardworking public workers across the country has been allowed to go on this long."

"Freeing millions of public employees from the shackles of forced unionism has long been a goal of the Foundation's Strategic Legal Program," continued Mix. "After decades of work and several close calls, a Supreme Court ruling that forced dues violates the First Amendment rights of public servants is within our grasp." 

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.

Missouri Workers Win Case Challenging Deceptive Ballot Summaries

Missouri Judge rejects Union Boss-backed ballot language as “unfair and insufficient”



Governor Greitens signed the Missouri Right to Work law in February, but union bosses are now trying to overturn it with deceptive ballot questions.

JEFFERSON CITY, MO — In late March, three Missouri workers, assisted by National Right to Work Foundation staff attorneys, won a crucial victory to defend the popular new Missouri Right to Work law, when a judge issued an initial court ruling against deceptive ballot language pushed by Big Labor to entrench their power to have a worker fired for refusing to pay dues or fees.

The three workers are police officers Roger Stickler and Michael Briggs, and nurse Mary Hill. Each has experienced forced-unionism abuses in the past, and could again without the protection of Missouri's Right to Work law. Their lawsuit challenges the deceptive ballot language proposed to overturn the law.

Deceptive Language Approved In 11th Hour Kickback

Former Missouri Secretary of State Jason Kander left office after a failed bid for a U.S. Senate seat and was replaced by Jay Ashcroft (sworn in on January 9). During his campaign and earlier political career, Kander was heavily supported by the Big Labor political machine.

Mere hours before leaving office, in a political payback to his Big Labor backers, Kander approved ten separate initiative petitions with deceptive summary statements. These petitions were submitted by Mike Louis, top dog of the Missouri AFL-CIO, just a month after the 2016 election and months before the Right to Work bill was passed.

The Kander-approved language deceptively disregarded the fact that the intent of the petitions was to block and overturn Right to Work protections, and that those protections ensured workers are not forced to pay dues to a union they oppose.

“These union bosses tried to kill Missouri's popular Right to Work law, before it even was introduced in the legislature, with the help of a midnight political favor by a big labor-backed candidate,” said Patrick Semmens, Vice President of the Foundation. “Union bosses know Right to Work is popular, which is why they are bent on deceiving voters about their intention to restore their power to have a worker fired for refusing to pay dues.”

The cases, *Hill v. Ashcroft*, were consoli-

dated and argued before Judge Beetem of the Cole County Circuit Court on March 2, with a ruling being issued on March 24. In his decision, Judge Beetem found that the Kander-approved language was “unfair and insufficient,” because the petitions would effectively repeal the new Right to Work law and failed to explain the true consequences.


In his ruling, Judge Beetem rewrote the ballot language for these petitions to eliminate the deception. The new language makes it clear that the intent is to overturn the state's Right to Work protections:

Do the people of Missouri want to change the [State] Constitution to remove the right to choose whether or not to join a union (“right to work”) and allow union representatives to force an employee to make payments to the union as a condition of employment?

The AFL-CIO has appealed the new language. Foundation attorneys will continue to defend these workers' rights and the state's Right to Work law, which is currently scheduled to go into effect in August.

Second Suit Filed Contesting Repeal Attempts

But the constitutional amendment gambit is not the only union boss attempt to overturn the recently passed Missouri Right to Work law. Soon after the Right to Work bill was signed into law in February, AFL-CIO Missouri Chief Louis also submitted a “repeal petition” to the Secretary of State's office. This new petition could put the new Right to Work law on hold and place it on the 2018 general election ballot.

The same three Missourians, assisted by Foundation staff attorneys, have filed a lawsuit challenging this new petition in court. The complaint alleges that the ballot summary as approved by Sec. State Ashcroft is unfair and contains gross grammatical errors. The suit was filed in Cole County Circuit Court on April 7. 



Defend Workplace Freedom With a Gift to the National Right to Work Foundation

Tax season is behind us, and you may be asking yourself, what can I do in 2017 to assist my tax situation as well as contribute to my favorite charity? This is the perfect time to invest in the National Right to Work Foundation and its Strategic Litigation Program while finalizing your estate plans.

While the term “estate planning” means different things to different people, we can all agree that we need a will or estate plan in place now, rather than later, to avoid putting an unnecessary burden on family members.

Estate planning includes the process of accumulating, managing, and distributing property over the course of a lifetime. Two increasingly popular tools to consider that can meet estate planning goals while supporting the National Right to Work Legal Defense Foundation are:

CHARITABLE LEAD TRUST:

A gift to the Foundation now and return of principal later:

- ☒ You can make a significant, ongoing gift to the Foundation;
- ☒ You may be able to provide your family with a greater inheritance than would otherwise be possible without an estate plan;
- ☒ You can reduce or eliminate income, estate and gift taxes now and in future years.
- ☒ Your gift helps provide future economic security for you as well as your family because the principal may be returned to you, your beneficiaries or your estate at the end of a pre-determined length of time.

CHARITABLE REMAINDER TRUST:

Income now and a gift to the Foundation in the future:

- ☒ Increase income for low-yielding assets;
- ☒ Reduce estate or gift taxes for your estate that would otherwise be due upon death;
- ☒ Diversify your investments and the potential for tax-free growth;
- ☒ Finally, create an income stream for your family or other close relatives you designate in your Trust.

Did you know? By making a gift of stock or securities you not only receive a tax deduction for 2017, but also can forgo any capital gains taxes on your securities that you have held for more than one year!

To Make a gift of Stock or Securities:

Beneficiary: National Right to Work Legal Defense Foundation, Inc.

8001 Braddock Road, Suite 600 Springfield, VA 22151

Receiving Bank: Merrill Lynch Account Number: 86Q-04155 DTC Number: 5198

Have any questions, or need additional information about a planned gift, gift of stock, or any other gift to the Foundation? Contact Ginny Smith at 800-336-3600.

Donations to the Foundation are fully tax deductible in the same manner as donations to a church or university. As in all legal, tax, and financial matters, please consult your tax advisor or estate attorney before making a decision on a planned gift or stock contribution.

Foundation Defends State Right to Work Laws Against Union Legal Attacks

Briefs in Seventh Circuit Court of Appeals and the WV Supreme Court counter Big Labor lawsuits

CHICAGO, IL – National Right to Work Foundation staff attorneys filed an *amicus curiae* brief with the Seventh Circuit Court of Appeals in defense of Wisconsin's Right to Work law. The action was triggered after a district court judge's decision to dismiss a challenge by union officials to Wisconsin's Right to Work law was appealed.

The union officials' attempt to have the lawsuit heard before an en banc (full panel) of Seventh Circuit Court of Appeals judges was rejected. Now a three judge panel of the Appeals Court will have to follow the previous decision that upheld Right to Work laws as constitutional in 2015 in a similar union boss challenge to Indiana's new Right to Work law.

Union lawyers argue that Right to Work laws, which simply allow a worker to get or keep a job without being forced to pay tribute to a union boss, should be overturned for two legally flawed reasons. First, union lawyers claim that Right to Work laws constitute an illegal taking of "union resources," in other words, union bosses are entitled to a portion of each worker's paycheck.

Second, union lawyers argue that, despite decades of precedent, section 14(b) of the National Labor Relations Act, which authorizes states to enact Right to Work laws, only allows states to prohibit forced formal union membership and payment of the part of union dues used for politics and other nonbargaining activities. This argument conflicts with the Supreme Court's rulings that the "membership" that can be required under the Act is limited to payment of the part of dues used for bargaining activities and is the same as the "membership" that states can prohibit under section 14(b).

Foundation staff attorneys counter these audacious legal theories in their brief, pointing out that union bosses do not have a "constitutional right" to a worker's paycheck and that Section



After protests failed to protect their forced-dues powers, union bosses are trying to strike down Wisconsin's and West Virginia's Right to Work laws in court.

14(b) has been correctly interpreted over the past 70 years to allow states to pass Right to Work laws that ban the forced payment of any union fees. The union lawyers' flawed interpretation would result in "membership" meaning one thing in one section of the Act, but something entirely different in another section.

Additionally, Foundation staff attorneys argue that the National Labor Relations Act grants unions immense workplace power by allowing them to impose a one-size-fits-all union contract on all employees – union and nonunion alike – in a union-controlled bargaining unit. The brief argues that the federally-granted monopoly power over workers would serve as more than adequate "compensation."

"To the extent that U.S. labor laws create an 'impermissible taking' it is in union bosses using the forced unionism provisions in federal law to seize mandatory union fees from workers without Right to Work protections," commented National Right to Work Vice President and Legal Director Ray LaJeunesse. "If the Takings Clause were implicated at

all, federal monopoly bargaining powers, not state Right to Work protections, should be struck down as a result."

Right to Work laws have withstood intense legal scrutiny for 70 years, having never been struck down by a federal court or a state appellate court. Foundation staff attorneys have also recently defended newly enacted Right to Work laws in Indiana, Michigan, Wisconsin, and West Virginia from various union legal challenges.

Foundation Defends Against Attack on West Virginia Right to Work

On February 12, 2016, the West Virginia Legislature passed a Right to Work law by overriding Governor Tomblin's veto of the bill. Almost immediately, union lawyers filed a lawsuit, *West Virginia AFL-CIO v. Tomblin*, using outrageous legal logic similar to that in their suit against Wisconsin's Right to Work law, arguing that Right to Work laws constitute an "illegal taking" of union resources.

As in other states, West Virginia union bosses turned to local judges, who may

Featured Foundation Commentary
INVESTOR'S BUSINESS DAILY®

Public Sector Monopoly Bargaining Distorts Democracy

By Mark Mix

Reprinted from Investors Business Daily March 29, 2017

A recent Florida Supreme Court decision highlights the dangers — to taxpayers, to freedom of association and even to the democratic principles of representative government — of granting public sector union bosses monopoly-bargaining powers.

Under such government-imposed schemes, elected officials who are charged with determining public policy and allocating government functions are forced to negotiate on how tax dollars are appropriated with union officials — who are unaccountable to voters and taxpayers. In many ways these union officials are even unaccountable to the rank-and-file workers they claim to “represent.”

The City of Miami saw the disastrous results of this firsthand in 2010 and 2011 when city officials faced a fiscal crisis with a projected \$140 million deficit out of a budget of \$500 million.

With \$400 million of the budget going toward monopoly contracts negotiated by unions, city officials attempted to close the gap by invoking a clause in Florida law that allows government union contracts to be altered in the case of a “financial urgency.” Refusing to give an inch for the benefit of the citizens and taxpayers, union lawyers challenged the move all the way to the state Supreme Court.

In its decision handed down earlier this month, the court accepted the union lawyers’ claim that city officials hadn’t sufficiently proved a “financial urgency” because they had not exhausted all possible options to increase city revenues, including an increase in property taxes and fees or the installation of red-light cameras to generate revenue.

In effect, this disastrous ruling gives union officials the power to demand tax hikes and other onerous restrictions on citizens before the city can even consider reforms to the 80% of its budget that most needs it.

While the example is stark, it is far from isolated. Public sector union officials nationwide have enormous legal privileges that no other private organization or individual enjoys. In nearly all states public officials are required by law to bargain with union bosses, resulting in increasing deficits and spending to the detriment of millions of citizens.

Look no further than the state of Illinois, which faces a budget deficit of \$9.6 billion and an unfunded pension liability to unionized public workers of \$28,200 for every citizen. Adding insult to injury, thousands upon thousands of Illinois public employees are forced to fund union bosses’ advocacy of controversial political activities and endorsements that

drive up taxes and spending, and go for pensions that most will probably never see.

For independent-minded public employees, that could change soon. Earlier this month, National Right to Work Legal Defense Foundation attorneys argued a case in federal appeals court for Illinois state employees challenging mandatory union payments, including forced subsidies of union speech, as a violation of the First Amendment.

Their case, *Janus v. AFSCME*, could reach the U.S. Supreme Court next term. The court deadlocked on the issue last term and if confirmed, Judge Neil Gorsuch could provide the decisive vote.

The need for reform doesn’t end with protecting public employees’ First Amendment rights. Fortunately, some states have begun to see the light. Wisconsin’s Act 10, passed in 2011, rolled back the special legal privileges union bosses had enjoyed for decades by ending forced dues and the use of state

resources to collect them, mandating recertification elections every year, and limiting bargaining to pay raises tied to inflation. Iowa lawmakers just passed a similar bill that limits unions’ monopoly-bargaining powers.

Wisconsin’s Act 10 has done wonders for the budgetary issues facing Wisconsin taxpayers, and Iowa has every reason to expect similar results. But as other states look at the problem of monopoly-bargaining by government unions, there is another model to consider that provides even more fundamental reform.

Rather than simply limit the subjects over which government unions can “bargain,” why not eliminate such bargaining altogether so union bosses no longer possess the power to interfere with what should rightfully be decided by voters’ chosen representatives.

North Carolina and Virginia are currently the only two states with laws prohibiting monopoly-bargaining by government unions, but it hardly means public employee unions don’t exist in the states. Ask elected officials in Raleigh or Richmond and they will tell you that public sector unions still remain a powerful force absent any state-granted bargaining powers, as unions lobby legislators on behalf of their voluntary members.

Ending monopoly-bargaining powers for government workers protects the freedom of association of independent-minded public employees and ends the anti-democratic process whereby the voters’ elected representatives are required to cede power to a special interest over the very issues we elect legislative bodies to decide.

The alternative — as the Miami case shows — is a system where union officials are empowered by their special bargaining powers to demand tax hikes and onerous restrictions on the citizenry, despite opposition from the voters and their representatives alike.

...union lawyers' claim
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 fees or the installation
 of red-light cameras...

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Drivers Fight for Independence from Monopoly Unionism

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officials to make payment of union dues or fees mandatory, even for drivers who oppose union representation.

Under “card check,” cards solicited and collected from individuals by professional union organizers are counted as “votes” for unionization. There are numerous examples of workers signing the cards as a result of being pressured, misled, threatened or even bribed.

The ordinance was passed by the Seattle City Council after heavy lobbying by Teamsters union officials who seek to take advantage of independent drivers and force them to pay dues to the union as a condition of picking up riders through the apps. Shortly after the bill was passed, the National Right to Work Foundation issued a special legal notice to Seattle independent driver contractors, notifying them of their rights and offering free legal aid. A number of concerned drivers then reached out to the Foundation for help.

“Teamsters union bosses are attempting to impose their antiquated 1930s era forced unionism model on a 21st-century workforce,” said Mark Mix, President of the National Right to Work Legal Defense Foundation. “Polls consistently show Americans overwhelmingly oppose workers being forced to pay union dues or fees as a condition of working.”

After the bill became law in December 2015, the ordinance was put on hold until January 2017 while the Seattle Department of Finance and Administrative Services (FAS) finalized the unionization process. The final rule defines “qualifying drivers” who are eligible to vote on unionization as drivers who have completed 52 rides beginning or ending in Seattle in the last 90 days, regardless of whether or not a driver wants anything to do with a union.

These so-called “qualifying drivers” will be the only drivers eligible to card check “vote” to determine union repre-

THE WALL STREET JOURNAL.

THURSDAY, MARCH 30, 2017

Eleven drivers sued in federal district court in Seattle, arguing in *Clark v. Seattle* that by allowing forced unionization, the ordinance violates their First Amendment rights and is pre-empted by federal law. The Seattle ordinance says unions can force ride-share companies to drop drivers who aren't in the union. But the National Labor Relations Act says it is an “unfair labor practice” if a union or employer enters a contract in which they agree to “cease doing business with any other person.”

The traditional union model doesn't work for sharing-economy businesses that let workers pick their hours, drive their own cars, and set their own participation in the workforce. Drivers don't work for Uber and Lyft. They work for themselves, using the company platforms to connect with customers.

The Wall Street Journal Editorial Board featured the Foundation's lawsuit in support of efforts to block this unprecedented forced unionism scheme.

sentation, despite the fact that all drivers who contract with these companies will be subject to the forced unionism terms. Effectively, Teamster cards collected from a small fraction of all drivers could result in the unionization of more than 9,000 drivers in Seattle, plus any future drivers.

Ordinance Enjoined in Federal Court

On March 7, 2017, the Teamsters union officials who pushed for passage of the first-in-the-nation Seattle ordinance subjecting ride-sharing drivers to forced unionism, filed papers with the city formally declaring their intent to unionize drivers who work with Uber and Lyft, as well as Eastside Town Car and Limousine, LLC.

Oral arguments in the drivers' suit and a similar suit brought by business organizations were heard by Judge Lasnik in

a District Court hearing on March 30. Judge Lasnik granted a preliminary injunction on April 4, enjoining the mandatory disclosure clause of the ordinance until the case could be fully heard. In the order, Judge Lasnik stated, “... plaintiffs have raised serious questions that deserve careful, rigorous judicial attention, not a fast-tracked rush to judgment based on a date that has no extrinsic importance.”

“Big Labor's one-size-fits-all, top down model is the very antithesis of ride-sharing, which attracts drivers by connecting them with consumers and providing them the freedom to decide when to work and through which app to find customers,” Mix continued. “Expanding forced unionism to independent drivers is not only wrong, it is a violation of federal law and the First Amendment rights of drivers who never asked for and don't want union officials' so-called ‘representation.’”

RTW Laws Defended

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not be as familiar with the complexities of federal law, to attack Right to Work protections for employees. West Virginia Kanawha County Circuit Judge Jennifer Bailey bought the arguments that Right to Work laws constitute an illegal taking of “union resources” and violate the unions’ rights of association and issued a preliminary injunction halting the law from going into effect while the case is pending.

Foundation staff attorneys filed an *amicus curiae* brief for the National Right to Work Foundation and Reginald Gibbs, an employee of the Greenbrier Hotel and Casino, with the West Virginia Supreme Court where the case is now on appeal. Foundation staff attorneys also filed a motion to intervene in the case for Gibbs – who can be forced to pay dues without the protection of a Right to Work law.

In their brief, Foundation staff attorneys respond to the legally dubious arguments that were presented by union lawyers and accepted by Judge Bailey. The unions’ right of association argument has already been rejected by the U.S. Supreme Court. Furthermore, arguments similar to the union lawyers’ takings clause claims were rejected by a U.S. Court of Appeals and the Indiana Supreme Court when they were raised in cases challenging Indiana’s Right to Work law.

The Wisconsin and West Virginia lawsuits are the latest in a nationwide effort to strike down Right to Work laws despite 70 years of legal precedent upholding the constitutionality of state Right to Work laws, including U.S. Supreme Court decisions. Union lawyers are also advancing these arguments against Idaho’s Right to Work Law in a case that has reached the historically forced-dues-friendly Ninth Circuit Court of Appeals, but in that venue too, Foundation staff attorneys have quickly moved to counter Big Labor’s attempts to reinstate their forced-dues powers. ⚖️



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter,

Since 1968 the National Right to Work Foundation has been at the forefront of freeing public sector workers from the shackles of forced unionism.

From *Abood v. Detroit Board of Education* to *Harris v. Quinn*, the Foundation has relentlessly chipped away at Big Labor’s special legal powers over public sector workers.

As you will read about in this issue of Foundation Action, one Foundation case, *Janus v. AFSCME*, is only one step away from the U.S. Supreme Court.

With the Foundation continuing to hammer away at Big Labor’s forced-dues privileges, union bosses are seeking to corral new sectors of workers into dues-paying ranks.

Their latest scheme is the unionization of all independent drivers who contract with ride-sharing services such as Uber and Lyft.

Recently, a District Court Judge issued a preliminary injunction blocking that scheme for the time being, but this is only the first battle in what is sure to be a long war to protect these workers from greedy union officials eager to fill their coffers.

Your support allows the Foundation to go on the offense against Big Labor schemes like this while continuing to defend individual workers from the abuses of compulsory unionism.

Sincerely,

Mark Mix