



Foundation Action

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Janus Victory Opens Door for Lawsuits Seeking Millions in Forced-Dues Refunds

Foundation staff attorneys assist public-sector employees in halting 'opt-out' schemes across the country

WASHINGTON, DC – For years, union officials have been denying employee’s rights by using “opt-out” schemes, in which employees must take steps simply to refrain from paying for union activity they cannot legally be required to fund.

However, in the Foundation-won *Janus v. AFSCME* decision that freed public sector workers from compulsory dues, the U.S. Supreme Court affirmed that charging union fees is a violation of the First Amendment “unless employees clearly and affirmatively consent before any money is taken from them.”

That affirmation of workers’ rights has opened the door for thousands of employees to hold union officials’ accountable for coercive “opt-out” schemes, in which officials had required employees to take steps simply to protect their First Amendment rights.

SCOTUS Overturns Lower Court Decision Denying Providers Refunds

The Foundation is providing free legal representation to government employees across the country in numerous cases seeking the return of fees seized without consent by union officials.

A group of Illinois home care providers is seeking the return of \$32 million in union fees seized in a coercive scheme by SEIU officials. With free legal aid from Foundation staff attorneys, the providers took



The Foundation’s Supreme Court victory in *Janus v. AFSCME* opened the door for several Foundation-litigated lawsuits seeking the return of union fees unconstitutionally seized from public sector workers.

their case, *Riffey v. Rauner*, all the way to the U.S. Supreme Court.

Riffey v. Rauner is a continuation of the 2014 Foundation-won Supreme Court *Harris v. Quinn* case. In *Harris*, the Court ruled that a forced-dues scheme imposed by the state of Illinois, in which over 80,000 individual home care providers in Illinois were unionized and required to pay union fees, violated the First Amendment.

After the Supreme Court decision, the case was re-designated as *Riffey v. Rauner* and remanded to the District Court to settle remaining issues, including whether or not tens of thousands of providers who had never joined the union would receive refunds of the money SEIU officials seized without consent.

However, in June 2016, the District Court ruled that the SEIU did not have to repay the funds, despite the

Supreme Court ruling declaring the scheme unconstitutional. Foundation staff attorneys appealed the case to the U.S. Seventh Circuit Court of Appeals, which affirmed

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Foundation Defends State Right to Work Laws from Big Labor's Legal Assault

Foundation's SCOTUS victory ends threat to workers' state protections but battle continues in KY, WV

FRANKFORT, KY – As the Foundation's victories continue to chip away at Big Labor's forced-dues empire, staff attorneys remain vigilant in enforcing workers' current protections.

Currently, 27 states have passed Right to Work laws protecting employees from compulsory unionism by giving them the choice whether or not to associate with and financially support a union.

In attempts to regain their forced-fees privileges, union bosses have launched a nationwide legal assault on state Right to Work protections, including those in Idaho, West Virginia, and Kentucky.

Union Lawyers Abandon One Legal Attack After Foundation's *Janus* Victory

Thanks to the Foundation's victory at the U.S. Supreme Court in *Janus v. AFSCME*, union officials were forced to withdraw an appeal pending at the U.S. Ninth Circuit Court of Appeals that could have put Right to Work laws in Arizona, Idaho, and Nevada, and ultimately protections across the country at



The Kentucky Supreme Court will rule on the commonwealth's Right to Work law in the coming months. Foundation attorney William Messenger, counsel-of-record in *Janus v. AFSCME*, presented during the oral arguments in August.

risk.

Union lawyers representing International Union of Operating Engineers (IUOE) Local 370 officials in *IUOE v. Wasden* had filed a lawsuit against Idaho's popular Right to Work Law. Their claim rested on the outrageous legal "logic" that union officials are constitutionally entitled to a portion of workers' paychecks.

Just hours after the Supreme Court released the landmark *Janus* decision, declaring that public sector

workers cannot constitutionally be forced to pay union fees, the Court of Appeals asked that the parties in *IUOE v. Wasden* submit briefs on *Janus'* impact on the lawsuit. Before the deadline for that brief, union bosses notified the Court of Appeals that they were withdrawing their legal challenge.

"This development is a huge victory for independent-minded workers, not just in Idaho but across the country," said Foundation President Mark Mix. "IUOE officials tried to push their outrageous legal theory to overturn over 60 years of precedent which, had it been accepted could have wiped out Right to Work protections for millions of workers. Thankfully, this attempt to end Right to Work laws has failed, and Idaho workers still have the liberty to choose whether or not to financially support a union."

In addition to successfully arguing the *Janus* case at the U.S. Supreme Court, Foundation staff attorneys filed an *amicus curiae* brief in the *IUOE v. Wasden* case to defend the right of Idaho and other states to enact Right to Work laws.

Foundation staff attorneys have also been busy defending recently enacted state Right to Work laws in Kentucky and West Virginia

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Foundation Pushes for Rule Change to Stop Big Labor's Illegal Medicaid Skim

Union bosses have already diverted over \$1 billion in Medicaid funds intended for caregivers

WASHINGTON, DC – Each year, schemes enacted by ten states allow well over \$100 million to be diverted from healthcare providers to union officials. By skimming money from Medicaid programs, union bosses flout federal law and a National Right to Work Foundation-won Supreme Court decision.

A rule proposed by the U.S. Centers for Medicare & Medicaid (CMS) would end the scheme. In August, the Foundation submitted formal comments to CMS supporting the agency's proposal that would clarify that the diversion of Medicaid payments from providers to third parties, including unions, violates federal law.

Proposed CMS Rule Would Halt Union Officials' Skimming Healthcare Payments

In 2014, the Obama Administration promulgated a new regulation to give legal cover to ongoing schemes of the SEIU and other unions that siphoned money from Medicaid funds, violating the federal Medicaid statute that prohibits assigning benefits to third parties. Union officials have to-date skimmed over \$1 billion in Medicaid funds intended for caregivers.

The Foundation's comments call on CMS to halt the skim, urging the agency to repeal the Obama rule and replace it with clear language to give states notice that continuing to divert payments puts their Medicaid funding at risk.

"It is long past time for this outrageous exemption for union officials to be ended," said Foundation Vice President and Legal Director Ray LaJeunesse. "The CMS should expeditiously issue a final rule to stop the illegal diversion of funds from Medicaid providers. Despite the wishes of the politicians whom they support,



Pam Harris, a home health care provider for her son Josh, won the U.S. Supreme Court *Harris v. Quinn* decision with the help of Foundation staff attorneys. Although the High Court declared it unconstitutional to skim union dues from Medicaid funds, the skim continues.

union officials are not exempt from federal law. All the current proposed rule change would do is close an illegal loophole the Obama Administration invented."

Foundation Helps Caregivers Hold Union Officials Accountable for Scheme

Even as union officials circumvent the law through special privileges, the Foundation has fought to restore justice to the thousands of providers affected.

The 2014 Foundation-won *Harris v. Quinn* Supreme Court decision held that it is unconstitutional for states to force home care providers receiving Medicaid subsidies to pay union fees. The case continues, now designated as *Riffey v. Rauner*, as Foundation attorneys seek the return of over \$30 million in funds seized from 80,000 providers in violation of their First Amendment rights.

Despite the Supreme Court ruling, the skim has not stopped. That is

why in 2017 the Foundation sent a letter to the Department of Health and Human Services to bring its attention to the issue. Moreover, Foundation President Mark Mix personally raised the issue with Trump Administration officials at the White House earlier this year.

"Our National Right to Work Foundation-won 2014 *Harris* decision made it illegal for states to require providers pay fees to union officials, but the current scheme to deduct union fees from Medicaid payments is part of the union bosses' attempts to undermine that ruling," said LaJeunesse. "Nothing in the proposed CMS rule would stop providers from making truly voluntary dues payments to union officials by check or credit card each month. The rule would merely stop union bosses from using public payment systems to capture tax dollars intended for providers caring for those in need." ✚

Oregon Civil Servant Wins First Refund of Forced Fees Under *Janus*

SEIU officials forced to settle lawsuit and return nearly \$3k in illegal forced fees

EUGENE, OR – Workers have already begun claiming their new rights under *Janus*. After being forced for years to support a union that opposed her personal views, including her religious convictions and her husband's campaign for office, Debora Nearman has won a settlement against SEIU Local 503 officials for their violations of her First Amendment rights.

SEIU officials are required to return over two years of illegally seized fees, nearly \$3,000, to Nearman. The refund is the first return of forced fees as a result of the U.S. Supreme Court *Janus v. AFSCME* decision, which held that the First Amendment prohibits mandatory union fees.

Nearman, an employee at the Oregon Department of Fish and Wildlife, filed the lawsuit in April challenging the constitutionality of mandatory union fees as a condition of government employment. She objected to being forced to financially support and associate with SEIU Local 503 because the organization actively opposed her personal and political views, including her religious beliefs, and her husband's public service.

State Employee Forced to Support Union that Campaigned Against her Husband

In the 2016 general election, Nearman's husband, Mike Nearman, successfully ran for State Representative in the Oregon Legislature. During the campaign, the SEIU local union that she was forced to fund spent over \$53,000 to run an aggressive campaign against him, including distributing disparaging fliers.

After the *Janus* decision declared that forced fees for government employees were unconstitutional,



Debora Nearman won a settlement against SEIU with the help of Foundation staff attorneys. Thanks to *Janus*, she is no longer forced to fund the organization that ran an aggressive campaign against her husband, Rep. Mike Nearman.

the writing was on the wall for SEIU officials. In the process, Nearman's case became the first in which a public employee won a refund of fees seized by union officials prior to the *Janus* decision.

Janus overturned the erroneous 1977 decision in *Abood v. Detroit Board of Education* that declared public sector workers could be compelled to pay union fees for bargaining-related purposes in order to get or keep their jobs. In *Janus*, the Court ruled that it is unconstitutional to force government employees to pay any union dues or fees as a condition of employment.

The Court also clarified that no union dues or fees can be taken from workers without their affirmative consent and knowing waiver of their First Amendment right to refrain from supporting a labor union.

In addition to returning over two years of forced fees, SEIU officials

will not collect any dues or fees from Nearman's future wages unless she affirmatively chooses to become a member of SEIU and authorize such deductions. To comply with *Janus*, SEIU Local 503 and the state of Oregon have removed their forced fees provision from their collective bargaining agreement.

"This is a great example for the countless public sector workers across the country who seek to have their First Amendment rights respected in light of the Foundation's *Janus* Supreme Court victory," commented National Right to Work Foundation Vice President Patrick Semmens. "Nearman's refund represents the first of what should ultimately be hundreds of millions of dollars or even more returned to public employees for union fees seized from them in violation of the First Amendment." ✚

Workers Ask SCOTUS to Hear Case Challenging Union Restrictions on Halting Dues

Grocery store workers were blocked from ending union payments due to arbitrary “window period”

WASHINGTON, DC – On the heels of the *Janus v. AFSCME* victory at the Supreme Court, National Right to Work Legal Defense Foundation staff attorneys have asked the Court to take up another case for independent-minded workers. Robbie Ohlendorf and Sandra Adams, two employees of Oleson’s Food Stores in Michigan, are pursuing a class action lawsuit with free legal assistance from Foundation staff attorneys. They contend United Food and Commercial Workers Local 876 (UFCW) union’s check-off revocation restrictions violate federal labor law.

Michigan’s Right to Work protections, which were signed into law by Governor Snyder in 2012, make union membership and financial support strictly voluntary. However, union officials frequently block workers from exercising their legal rights, even in Right to Work states. Ohlendorf and Adams, a part-time stocking clerk and a cashier respectively at Oleson’s Foods Stores, found this out when they attempted to exercise their right to end payments to UFCW officials in 2016.

When the two submitted letters to the UFCW Local 876 revoking their authorization for the union to collect dues, UFCW officials rejected the attempt. The officials cited a “window period” and certified mail rule, which require any revocation to take place only in a short arbitrary union-defined time period and only by certified mail.

Lawsuit Challenges Union-Dictated Limitations on Right to Work Protections

Believing UFCW’s policies violated their rights, the two workers turned to National Right to Work Foundation staff attorneys



*Just days after the landmark victory in *Janus v. AFSCME*, Foundation staff attorneys filed a petition at the Supreme Court for two Michigan grocery workers who were barred from ending dues payments.*

for help. With free Foundation-provided legal representation, the pair filed a federal class-action lawsuit in December 2016 against UFCW Local 876. They brought the lawsuit on the grounds that union officials’ restrictions limiting dues revocations to a “window period” and demanding that such requests be made via certified mail violate their statutory rights and breach the union’s duty of fair representation.

After a Western Michigan U.S. District Court judge ruled the dues deduction authorizations containing the restrictions were binding, the grocery employees appealed to the Sixth Circuit Court of Appeals, which in March declined to overturn the district court’s ruling. For the first time, the Court of Appeals also held that employees cannot bring a lawsuit statutorily challenging a union’s restrictions on revocations.

If the Supreme Court agrees to hear the case, the two workers’ lawsuit may have a resounding impact on whether employees can sue in federal courts to challenge union-imposed window periods, which union officials regularly use

to prevent workers from exercising their legal right to stop dues payments in Right to Work states.

“Unions have a long history of using these so-called ‘window period’ rules to block workers from exercising their legal rights and continue to seize forced dues against the employees’ will,” said Ray LaJeunesse, Vice President of the National Right to Work Foundation. “Even in Right to Work states, Big Labor officials will concoct new methods to keep extracting dues from workers—and now the Supreme Court has a chance to weigh in and put an end to these abusive union practices.”

“Arbitrary union limitations on ending dues payments violates union officials’ duty not to use their government-granted monopoly powers to discriminate against workers who exercise their legal rights to resign from union ranks,” continued LaJeunesse.

The Supreme Court could decide as early as October whether or not to hear the case, which would be the eighteenth Foundation case argued before the nation’s highest court. ✎

California Restaurant Employees Successfully Remove Union after Years of Obstruction

Landslide vote against union bosses came after years of delay by Obama NLRB

SAUSALITO, CA – Workers at Scoma's of Sausalito, a California restaurant, held a decertification election on July 10 to remove the UNITE HERE union from their workplace, resulting in a 37-12 landslide vote against the union. The successful election was a culmination of over four years of employee efforts to remove the union's presence at the restaurant. The restaurant employees received free legal aid from National Right to Work Legal Defense Foundation staff attorneys in their efforts to exercise their rights to oust the unwanted union.

In 2013, restaurant employee Georgina Canche and a majority of her fellow coworkers successfully petitioned their employer to withdraw recognition of UNITE HERE as their monopoly bargaining representative. Although a majority of the employees signed the petition and the employer followed procedure established by longstanding labor law, the union filed a federal charge against the employer with the National Labor Relations Board to reinstate its monopoly bargaining powers, regardless of the workers' petition.

Obama Labor Board Trapped Workers in Unwanted Union for Four Years

The notoriously pro-forced unionism Obama Labor Board sided with union lawyers, and even issued a "bargaining order" to block attempts by the workers to hold a secret ballot vote to decertify and remove the union as the employee's monopoly bargaining "representative." With the backing of the workers, Scoma's appealed the case to the D.C. Circuit Court of Appeals, which unanimously overturned the "bargaining order" and remanded the case to the Labor Board so that a decertification vote



Georgina Canche and her fellow workers at Scoma's, a CA restaurant, finally ousted unwanted union officials from their workplace after years of legal delays.

could proceed.

One judge wrote separately and excoriated the Board for its blocking charge policy that delays elections.

After additional delay, the NLRB Regional Director finally conducted a secret ballot decertification election, in which the workers voted overwhelmingly to remove UNITE HERE from their workplace. Thus, five years after a majority signed their petition to kick the union out of their workplace, the workers were finally free of the union.

"After years of dilatory legal challenges by union lawyers with the help of Obama-installed bureaucrats, the workers of Scoma's restaurant are finally able to have a say in their own workplace representation," said Patrick Semmens, vice president of the National Right to Work Legal Defense Foundation. "This case shows the legal trickery used by union bosses to hold onto their

forced-dues powers, even when a clear majority of the workers the bosses claim to represent oppose their presence. This is why the Foundation's legal aid program is so vital in clearing the legal hurdles so workers can exercise their right to vote out a union they oppose." ✚

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Lawsuit Against SEIU Could Return Over \$100 Million in Forced Dues

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the District Court's ruling that, even though the workers never consented to their money being taken, they did not suffer First Amendment injury.

Earlier this year, Foundation staff attorneys asked the Supreme Court to grant certiorari and hear the case to clarify that taking fees from non-members without consent violates the First Amendment.

The day after *Janus*, the Court granted certiorari in *Riffey*, vacated the lower court's ruling, and remanded the case to be reconsidered in light of the new protections against "opt-out" schemes.

"With the Supreme Court remanding *Riffey*, we are one step closer toward vindicating the rights of the tens of thousands of victims, many of whom are family members caring for disabled children in their own homes," said Foundation President Mark Mix.

"Now, with the new protections for workers afforded by our landmark *Janus v. AFSCME* victory, it is critical to confirm that unions cannot require individuals to 'opt out' of union dues that they cannot be required to pay in the first place," continued Mix. "Union officials are still using such 'opt-out' schemes nationwide to limit workers' constitutional protections despite *Janus*' clear ruling that those schemes are impermissible. Ultimately, the clear ruling by the Supreme Court on this issue must be enforced in the lower courts to ensure that individuals who never joined a union cannot be required to take affirmative steps simply to protect their First Amendment rights."

California Class Action Lawsuit Could Return Over \$100 Million in Seized Dues

Foundation attorneys are also seeking to halt an "opt-out" scheme in which SEIU officials seized



Susie Watts, a plaintiff in the U.S. Supreme Court *Harris v. Quinn* decision, is a home health care provider for her daughter Libby. *Harris* continues as *Riffey v. Rauner*, in which providers seek the return of \$32 million in unconstitutionally seized union fees.

millions of dollars in forced dues from thousands of California state employees.

The workers are challenging SEIU Local 1000 officials' "opt-out" policy that required workers to affirmatively opt out of the portion of union fees that workers cannot be legally required to fund.

In 2015, a federal judge certified Foundation staff attorney W. James Young as the attorney for the entire class of more than 30,000 non-members who had been coerced since June 2013 into funding SEIU union officials through the scheme.

The case is pending in the U.S. Ninth Circuit Court of Appeals on appeal from the District Court's dismissal of the claim. Hours after the *Janus* ruling declared that workers must provide affirmative consent to be charged union fees, Young notified the Court of Appeals of the decision's relevance to *Hamidi*.

Unions have been on notice of the dubious legal grounds of its "opt-out" policy since the Foundation won the *Knox v. SEIU* Supreme Court decision in 2012, when the Court ruled in favor of a similar

class of workers forced to pay union dues.

Because SEIU Local 1000 did not adjust its policy of forcing workers to opt-out of non-chargeable fees after *Knox*, the *Janus* decision means the union could be required to refund all fees seized since June 2013 from the more than 30,000 class members, an amount estimated to be well over \$100 million.

"For years union bosses have violated the rights of public employees and seized billions of dollars in unconstitutional forced fees," said Mix, "Now, armed with the *Janus* precedent, Foundation staff attorneys are seeking to force union officials to return those ill-gotten gains to the workers whose rights they violated." ✚



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Foundation Defends State Right to Work Laws

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against union boss lawsuits seeking to re-establish their forced-dues powers and earlier successfully helped defend Right to Work laws in Indiana, Michigan, and Wisconsin.

In West Virginia, Foundation staff attorneys have filed nearly a dozen briefs at various stages of an ongoing lawsuit brought by a group of union officials. The case is currently pending at the state Circuit Court after the state Supreme Court agreed with Foundation briefs and overturned an injunction union officials had obtained to block the Right to Work law from going into effect.

The Foundation has also been active in defending the Kentucky Right to Work Law. After union officials filed a lawsuit against the law, Foundation staff attorneys successfully intervened in the case for three pro-Right to Work Kentucky workers.

After a state Circuit Court dismissed union officials' challenge in a January 2018 ruling, the Kentucky Supreme Court agreed to hear the case. In oral arguments at the Kentucky Supreme Court on August 10, veteran Foundation staff attorney William Messenger defended the Commonwealth's Right to Work Law against union lawyers' attacks.

In his argument Messenger, who successfully argued *Janus v. AFSCME* at the U.S. Supreme Court, urged the court to end Big Labor's baseless challenge to the state's Right to Work protections for employees. A ruling on the case is expected in the coming months. †



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Your Foundation's historic victory at the Supreme Court in *Janus v. AFSCME* has turned Big Labor's forced-dues privilege upside-down.

Every public sector employee across the country is now free from compulsory union dues and fees, cutting off a critical flow of forced tribute from Big Labor's political war chest.

The ruling cleared the path to restore justice to millions of workers whose rights had been trampled on by union officials' coercive forced-fees privileges. Foundation attorneys are hard at work enforcing the new *Janus* precedent, protecting government workers' First Amendment right to choose whether or not to support a union.

Yet compulsory unionism is still a problem in America.

Millions of private sector workers in the 23 states without Right to Work laws are still subject to forced union fees, compelled to pay up to union officials to keep their jobs.

As Big Labor's grip on workers' paychecks is increasingly weakening, union officials are seeking to circumvent the law through convoluted schemes and far-fetched legal attacks. Foundation staff attorneys have vigilantly defended state Right to Work laws against union lawyers' outrageous arguments seeking to eliminate the very existence of such protections.

New legal precedents and reforms must be established to restore private sector workers' rights. The Foundation is cutting through the web of Big Labor-friendly rules and regulations left behind by the Obama Administration, championing changes that will restore balance to labor law and, most importantly, freedom to the individual worker.

The fight is far from over. Your generosity has made impactful victories like *Janus* a reality, and with your continued support, the Foundation will continue to press toward the ultimate goal: to protect the Right to Work for every American worker.

Sincerely,

Mark Mix