



# Foundation *Action*

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

Vol. XXXVII, No. 6

8001 Braddock Road • Springfield, Virginia 22160

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

November/December 2017

## U.S. Supreme Court to Hear Foundation Case to End Public Sector Forced Dues

### First Amendment lawsuit challenging mandatory union payments could free over 5 million public employees

WASHINGTON, D.C. - On September 28, the United States Supreme Court agreed to hear *Janus v. AFSCME*, which challenges mandatory union fees for public employees as a violation of the First Amendment. Mark Janus is a civil servant child support specialist from Illinois who turned to staff attorneys from the National Right to Work Legal Defense Foundation and the Liberty Justice Center for free legal aid when he felt that his rights were being violated by forced union fees.

Janus' Foundation attorneys will argue that forcing employees to pay money to union officials as a condition of government employment violates the First Amendment. If the High Court agrees, the ruling would create a precedent protecting every public employee from being forced to subsidize union activities.

### Illinois Worker's Lawsuit Reaches High Court

The *Janus* case began in February 2015, when newly elected Illinois Governor Bruce Rauner issued an executive order prohibiting state agencies from requiring nonmember state employees to pay union fees, based on a 2014 Right to Work Foundation U.S. Supreme Court victory in another Illinois case. Rauner also filed a federal lawsuit in the U.S. District Court for the Northern District of Illinois, asking



**Plaintiff Mark Janus and National Right to Work Foundation-provided staff attorneys seek to strike down forced union dues as a violation of the First Amendment.**

for a declaratory judgment that the forced fee provisions violate the First Amendment and that his executive order was valid.

In March 2015, staff attorneys from the Foundation and the Liberty Justice Center filed a motion for Mark Janus to intervene in the case. Janus' complaint requested not only a declaratory judgment but also an injunction and damages from the unions for the compelled fees. The court granted Janus' motion to intervene, which allowed the suit to move forward even after the court ruled that Governor Rauner lacked the proper standing to pursue the lawsuit.

After the Supreme Court deadlocked 4-4 following Justice Scalia's death in a case which raised the same constitutional issue, *Janus* became the lead case challenging forced dues as a violation of the First Amendment.

Citing *Abood v. Detroit Board of Education*, which permitted public

sector unions to require fees to subsidize monopoly bargaining, both the district court and later the Seventh Circuit Court of appeals ruled against Mr. Janus. That allowed Foundation staff attorneys to file a petition to the U.S. Supreme Court to take the case. In September the Court announced

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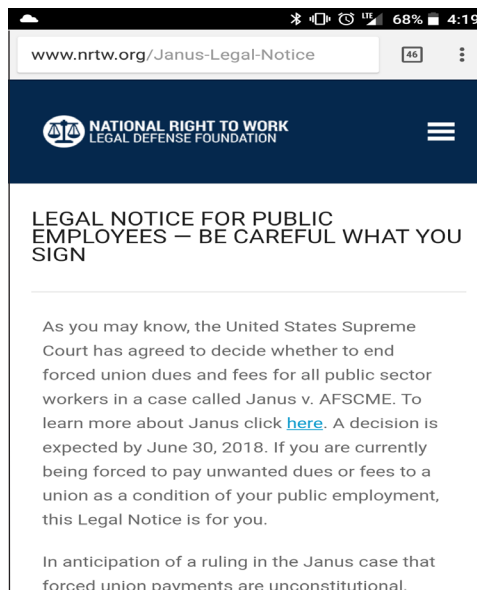
# Foundation Warns Workers of Union Boss Tricks Ahead of *Janus* Ruling

## *Special legal notice to public employees warns against signing away rights*

WASHINGTON, D.C. – With forced dues requirements for over five million public sector employees at stake in the Foundation's *Janus v. AFSCME* case now pending before the U.S. Supreme Court, union bosses coast-to-coast are already scrambling to limit workers ability to cut off dues payments if the court rules that mandatory union payments violate the First Amendment.

Following the Supreme Court's announcement in late September that it was taking the *Janus* case, there were reports that Big Labor was ramping up tactics to block the workers from escaping forced dues. In response, Foundation staff attorneys crafted a special legal notice to public employees, warning them against signing any union authorization cards that might later be cited to limit their right to stop paying dues.

"Unfortunately, there is a long history of union officials refusing to accept limits on their forced-dues powers, and with 5.2 million government workers forced to pay billions each year to union bosses, it is no surprise that union bosses



are pulling out all the stops to attempt to block them from using the protections that a Foundation win in the *Janus* case would bring," said Patrick Semmens, vice president of the National Right to Work Foundation.

"Although the scale may be unprecedented given the stakes of this Supreme Court case, unfortunately these tactics are nothing new," Semmens continued.

"Invariably, after Foundation-won legal precedents or enactment of new state Right to Work laws, union officials move to block the very workers they claim to represent from exercising their rights."

## Reports: Unions Pressing Workers To Sign Away Their Rights

The National Right to Work Legal Defense Foundation's special legal notice warns employees of the tactics teacher union bosses have already begun using:

For instance, according to the *Wall Street Journal*, Education Minnesota, an affiliate of the National Education Association, is having teachers sign pre-filled "membership renewal" cards which also authorize their employer to deduct union dues or fees from their paychecks.

This language may seem innocuous, but it is craftily designed to lock employees into paying dues even if they wish to cease paying. The *Wall Street Journal* also notes: "If public sector unions are putting this 'renewal' strategy in place in Minnesota, it's likely that they're making similar plans elsewhere."

Although Foundation staff attorneys question the legality of such cards, the special legal notice reminds workers that signing such a card could limit their legal options later. This is compounded by the fact that in many documented instances, union organizers solicit signatures under misleading or false pretenses.

Public sector employees are taking notice of such schemes and are already calling the National Right to Work Legal Defense Foundation to report this behavior by union officials and seek advice in protecting their rights. As always, Foundation staff attorneys are prepared to take legal action for workers who are illegally required to pay forced dues.✚

## Foundation Action

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Distributed by the  
**National Right to Work Legal Defense Foundation, Inc.**  
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# Union Bosses Admit Forced Dues Fuel Big Labor's Political Clout

*Union officials' public statements about forced dues belie their legal arguments*

WASHINGTON, D.C. – Since the Supreme Court's 1977 *Abood* decision, union dues for public employees have ostensibly been divided between political and ideological activities that workers could not be forced to subsidize and union activities regarding monopoly bargaining which state workers like *Janus v. AFSCME* plaintiff Mark Janus could be required to fund.

Beginning with the National Right to Work Foundation's 2012 *Knox v. SEIU* Supreme Court case, the High Court has begun to question whether that supposed line sufficiently protects the First Amendment rights of workers like Mr. Janus who do not wish to join or associate with a union, especially because all public sector union activities are directed at the government, making them inherently political. Nevertheless union lawyers continue to argue, and are expected to argue again to the Supreme Court in *Janus*, that the so-called "agency fees" which nonmembers are required to pay are completely unrelated to union political spending and lobbying.

However, in public statements about the impact of losing the power to compel payment from nonmembers, union officials and their allies repeatedly admit that their forced-dues powers are crucial to Big Labor's vast political influence.

## Only 35% of Workers Would Definitely Pay Dues Voluntarily

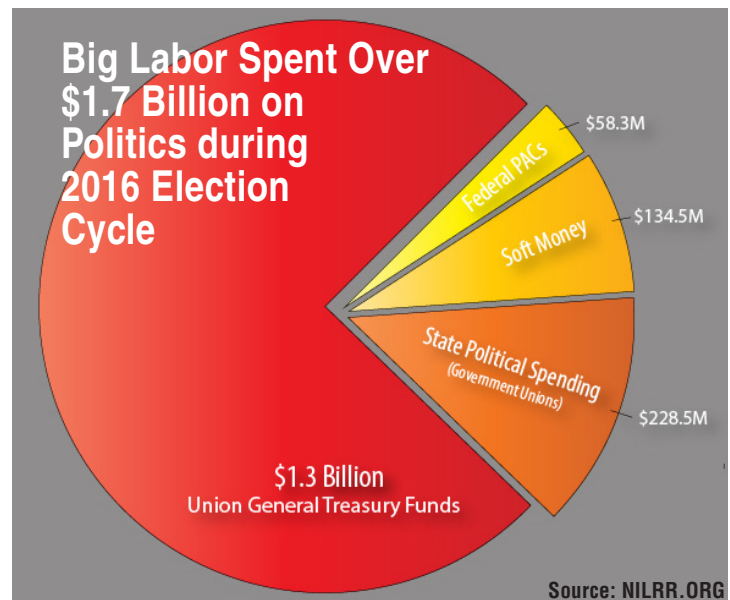
One of the starkest admissions about how dependent union bosses are on forced dues came from an internal report commissioned by AFSCME, the union in the *Janus*

case. According to a *Bloomberg News* report, the union study was commissioned to look at the potential impact of a Supreme Court ruling against forced fees. It concluded that union officials could only count on payments from "roughly 35%" of workers if dues were voluntary.

Of the remaining 65 percent, union officials said a quarter would likely opt out while the rest were "on the fence." A separate admission by AFSCME official and former Obama Administration appointee Naomi Walker demonstrates the extent to which forced dues fuel partisan union spending on politics.

Writing about *Janus* for a union-funded publication, Walker predicted that the "progressive infrastructure in this country, from think tanks to advocacy organizations—which depends on the resources and engagement of workers and their unions—will crumble," if the Supreme Court strikes down mandatory union fees. Meanwhile, the SEIU says it has planned for a 30% budget reduction in preparation for the loss of forced-dues powers over public employees.

Behind closed doors the recipients of Big Labor's political largess also admit that union political expenditures would be significantly impacted by a ruling striking down forced dues. A leaked copy of remarks by the head of the left-wing Democracy Alliance noted that the groups "dodged a bullet" when



Scalia's death left the High Court split 4-4 with forced dues intact.

Democracy Alliance has directed around \$500 million in political spending in recent election cycles. It counts national unions as a significant portion of its roughly 100 membership groups, which include AFSCME, SEIU and the two national teacher unions. In the leaked speech, Democracy Alliance President Gara LaMarche described the groups as "a key anchor of funding for progressive campaigns and causes." According to a report in the *Washington Free Beacon*, he warned that Big Labor's political allies would "need to find new ways to raise money to make up for the disastrous financial shortfall that could follow policies that prevent forced unionization."

According to public disclosure reports filed by union officials, Big Labor political spending during the 2016 election cycle topped \$1.7 billion. Of that figure, over \$1.3 billion came from union general treasury funds, funded largely by workers who would lose their jobs if they refused to pay union dues or fees. †

# National Right to Work Foundation-Backed U.S. Supreme Court Case

Well over 200 media outlets published articles dedicated to *Janus v. AFSCME* in the days following the Supreme Court's decision on the case. As part of the coverage, National Right to Work Legal Defense Foundation (NRLDF) was featured in the coverage across the country, including the *New York Times*, *Wall Street Journal*, *Washington Post*, *LA Times*, and *USA Today*.

Below are highlights of that coverage, which also included radio and television appearances.

## “Supreme Court to Consider Public Workers’ Rights”

“Supreme Court to Decide on Power of Public Sector Unions”  
- NBC News

## The Foundation’s Position on *Janus*

"Supreme Court Will Hear Case on Mandatory Fees to Unions"  
- New York Times

"Overturning *Abood* would effectively give all public sector union workers rights similar to those of private sector workers in right to work states"  
- Washington Examiner

"I just don't think it's fair to have a group for an individual with—that goes against the nature of a contract negotiation clearly implicates political issues"  
- Mark Janus

"Mark Janus...argues these compulsory fees violate his First Amendment rights. The nature of a contract negotiation clearly implicates political issues"

# Supreme Court Case Grabs Headlines Coast-to-Coast

Following the Supreme Court's announcement that it would hear the constitutional challenge, Foundation President Mark Mix was quoted in many of the largest and best read newspapers in the country, including the *New York Times*, *Chicago Tribune*, *Washington Times*, *Washington Examiner* and *USA Today*.

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**"Teacher Union Dues" - Wall Street Journal.**

*"Supreme Court Poised  
to Deal a Sharp Blow  
to Unions for Teachers  
and Public Employees"*  
- LA Times

**Union in the News :**

**Janus**

**V.**

**SCME**

"We are now one step closer to freeing  
over 5 million public sector employees  
from the injustice of being forced to  
subsidize a union as a condition of  
working for their own government."  
- NRTW President, Mark Mix

"I should be forced to pay  
for an association I don't agree  
with. This is a violation of the First Amendment."  
Mark Mix, Lead Plaintiff

"The Supreme Court's decision on First Amendment rights, as the  
Court has ruled in previous cases" - The Daily Caller

“Unlike the past three times the  
court has considered similar  
cases, its five-member  
conservative majority appears  
poised to rule that workers  
opposed to union representation  
cannot be forced to pay.”

- USA Today



## Featured Foundation Commentary

**NEW YORK POST***This Is Why All Union Dues Should Be Voluntary**By Mark Mix*

It's been a landmark year in the debate over forced union dues. Kentucky and Missouri became the 27th and 28th states, respectively, to pass Right to Work laws to ensure that financial support of a union is completely voluntary. Meanwhile, the US Supreme Court could announce in a few weeks that it will hear *Janus v. AFSCME*, a case seeking to strike down mandatory union payments as a violation of First Amendment rights of freedom of speech and freedom of association.

The basic case for Right to Work is simple: Forcing workers to pay money to a union they don't support is wrong. This is why polling consistently shows that Americans overwhelmingly support Right to Work, including strong majorities of independent, Republican and Democratic voters.

There are other reasons to support Right to Work, too. Workplace freedom is an economic engine, with private-sector job creation rates in Right to Work states double those in forced-unionism states between 2006 and 2016.

Plus, Right to Work laws make union officials more accountable to rank-and-file members. Without Right to Work, employees must pay up or be fired. With voluntary dues, workers can withhold financial support from a union that is corrupt, ineffective or putting its institutional interests ahead of what is best for workers. Right to Work is a defender of workers' rights — union members and nonunion alike.

Don't take my word for it. Among proponents of this view was Samuel Gompers, who founded the American Federation of Labor in 1886 and served as the longest-tenured president of the group that would later become the AFL-CIO. As president of the AFL in 1916, Gompers wrote, "The workers of America adhere to voluntary institutions in preference to compulsory systems which are held to be not only impractical but a menace to their rights, welfare and their liberty."

Gompers understood that true strength came from

voluntary membership, and that by using government-granted powers to force workers to associate with and fund unions — such as laws that prohibit employees from choosing their own workplace representatives — organized labor undermines its legitimacy to speak on behalf of workers.

Today, this is compounded by the fact that fewer than 6 percent of unionized workers currently under monopoly union contracts have even had the opportunity to vote for or against union representation. That's how entrenched forced unionization is in the American labor force.

In the years since Gompers wrote against "compulsory systems," Big Labor has completely tossed out any pretense of his "voluntary unionism" that attracts workers by showing them the potential benefits of unionization.

Instead, Big Labor has wholeheartedly embraced "compulsory unionism," which relies on special legal privileges from government to corral workers into a union with many having no say in the matter at all.

But with Right to Work states growing — six states have passed Right to Work in the past five years — and the potential Supreme Court ruling in *Janus v. AFSCME* looming that could give every government employee Right to Work protections, union officials may be forced to confront a future without the power to force workers to pony up.

At a recent Massachusetts AFL-CIO conference named after Gompers, union officials even organized a special panel titled "How to Survive Right To Work."

Without government-granted power to compel support, union officials would need to listen to their members and prove to them that paying union dues is worth it.

Union officials may find that level of accountability scary, but it's exactly how Gompers would have wanted it.

This op-ed originally appeared in the September 3, 2017 *New York Post*

# U.S. Supreme Court Could Strike Down Forced Dues by End of Term

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it would hear *Janus*, making it the 18<sup>th</sup> Supreme Court case litigated by Foundation attorneys.

*Janus* follows a series of decisions that suggested a willingness by the Supreme Court to reconsider the constitutionality of forced union fees. In 1977, the High Court held in *Abood* that, although union officials could not constitutionally spend nonmembers' funds for some political and ideological activities, unions could require fees to subsidize monopoly bargaining.

## Recent Foundation Supreme Court Victories Set Stage For Landmark Showdown

However, in 2012, the Supreme Court began to question *Abood*'s underpinnings. In *Knox v. SEIU*, brought to it by National Right to Work Legal Defense Foundation staff attorneys, the Court held that union officials must obtain affirmative consent from workers before using workers' forced union fees for special assessments or dues increases.

In the opinion Justice Samuel Alito authored, the door was left open to challenge all forced union fees as violating the First Amendment. Alito wrote: "by allowing unions to collect any fees from nonmembers and by permitting unions to use opt-out rather than opt-in schemes when annual dues are billed, our cases have substantially impinged upon the First Amendment rights of nonmembers."

Two years later, the Foundation assisted a group of Illinois home care providers who required state funds, including Pam Harris, a mother taking care of her disabled son, in a case challenging a state scheme authorizing Service Employees International Union (SEIU) officials to require providers like Harris to pay union dues or fees. National Right to Work Legal



Foundation Staff Attorney William Messenger (left) stands with plaintiff Susie Watts (center) and Foundation president Mark Mix (right) to address reporters after oral arguments in the 2014 *Harris v. Quinn* Supreme Court victory.

Defense Foundation staff attorneys took the case to the Supreme Court, which held that the forced-dues requirement violated the First Amendment.

## 'I Was Never Given a Choice'

In its *Harris* ruling, the Court continued to criticize the reasoning of *Abood* and refused to extend *Abood* to the "new situation" before it. The decision held Illinois' provider forced-dues scheme unconstitutional and cracked the door open even further for the Court to revisit *Abood* and the constitutionality of forced union fees, which it is now doing in *Janus*.

For Mark Janus, the case is about reclaiming his voice and his First Amendment rights that are stripped away by forced union fees. By standing up for his rights, his case could establish a precedent that would apply to the over 20 million public employees in America.

"The union voice is not my voice. The union's fight is not my fight," Janus wrote in an op-ed featured in the *Chicago Tribune*. "But a piece of my paycheck every week still goes to the union."

"I went into this line of work

because I care about kids. But just because I care about kids doesn't mean I also want to support a government union," he continued. "Unfortunately, I have no choice. To keep my job at the state, I have to pay monthly fees to the American Federation of State, County and Municipal Employees, or AFSCME, a public employee union that claims to 'represent' me."

"The First Amendment guarantees freedom of speech and freedom of association. I don't want to be associated with a union that claims to represent my interests and me when it really doesn't."

*Janus* stressed that he just wants all Americans to have the opportunity to exercise that freedom of association whether they want to join a union or not.

"I'm definitely not anti-union. Unions have their place and many people like them... I was never given a choice," he told the *Washington Free Beacon*. "I really didn't see that I was getting any benefit [from the union]. I just don't think I should be forced to pay a group for an association I don't agree with—that goes to the First Amendment."

"Somebody's got to do something,"

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## SCOTUS Showdown

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Janus said in the interview. "I figure it'll be a wake-up call to the union that they would have to provide a better benefit [to workers]."

"[The case] has national implications, but I don't look at it that way, I just look at it as an average guy standing up for his own rights and free speech. I don't look at it as if I'm anybody special or anybody extraordinary," the civil servant child worker said.

### Foundation Attorney To Argue Forced Dues Showdown

As this issue goes to print, a date has not yet been set for oral arguments, although the Supreme Court has notified Janus' Foundation-provided staff attorneys to expect arguments in January. Because *Janus* is one of the highest-profile cases the High Court has agreed to hear, Supreme Court experts expect a ruling would come in June at the very end of the 2017-2018 term.

Veteran Foundation staff attorney William Messenger will argue the case before the nine Justices, in what will be his third oral argument before the Supreme Court. In 2014, Messenger was lead attorney in the Foundation's *Harris* victory, which successfully struck down forced dues for homecare providers as a violation of their First Amendment rights.

As National Right to Work Foundation president Mark Mix told the *New York Times* when the Supreme Court agreed to hear the case: "We are now one step closer to freeing over five million public sector teachers, police officers, firefighters, and other employees from the injustice of being forced to subsidize a union as a condition of working for their own government." ¶



## Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter,

Four decades ago, National Right to Work Foundation attorneys argued at the United States Supreme Court for the first time that forced dues violate workers' First Amendment rights.

The Court unanimously agreed that independent-minded civil servants cannot be forced to pay union dues or "fees" that support a political or ideological agenda they oppose.

Unfortunately, a majority of the Justices stopped short of holding that forcing civil servants to pay any dues or fees is inconsistent with the First Amendment.

We have always believed the Court erred in that decision, incorrectly sweeping aside the First Amendment issues raised when a worker is forced to subsidize any speech by union officials that is directed at the government.

Since then, Foundation staff attorneys have been at the Supreme Court 15 more times, winning several other precedents, each of which has expanded workers' rights to free themselves from the bonds of compulsory unionism.

But we have never lost sight of the goal of freeing every public employee in the country completely from the shackles of forced unionism.

A new window of opportunity opened when, in the two most recent Foundation victories in 2012 and 2014, a majority of the Justices strongly suggested they were open to a new challenge.

Now, thanks to the dedicated support of concerned citizens like you, Foundation staff attorneys will be back at the Court in January raising this argument in *Janus v. AFSCME*.

If Foundation staff attorneys prevail, every government worker in America will enjoy the Right to Work.

Of course, no one can be certain what will happen at the Supreme Court, but our arguments are powerful, and our cause is just. And, because we never lost sight of the goal, in *Janus* we may achieve what just a decade ago many legal experts said would never happen.

Thank you once again for enabling us to fight on until no worker in America is forced to pay union dues or fees just to get or keep a job.

Sincerely,

Mark Mix