



Foundation *Action*

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

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Foundation Urges Federal and State Governments to Protect First Amendment Rights

Alaska first state to require First Amendment Janus rights waiver before deducting union dues

ANCHORAGE, AK – In late September, Alaska Governor Mike Dunleavy signed an executive order to protect the First Amendment rights of state employees established in last year's *Janus v. AFSCME* Supreme Court decision. The order calls for the State of Alaska to stop deducting union dues from the paycheck of any worker who hasn't filed a form with the state affirmatively waiving his or her First Amendment right under *Janus* not to fund any union activities.

The move follows a letter last year sent by National Right to Work Foundation Legal Director Raymond LaJeunesse to state comptrollers in Alaska and other states, urging them to modify dues deduction policies to comply with the *Janus* decision.

Foundation Comments Detail Need to End Dues Deductions Uncompliant with *Janus*

The Foundation also recently filed comments with the Federal Labor Relations Authority (FLRA) regarding the need for the federal government to take steps to protect the First Amendment rights of employees recognized in the Foundation-won *Janus* decision. The Foundation's comments were submitted after the U.S. Office of Personnel Management (OPM) asked the FLRA to solicit public comments on how to proceed with union dues deductions in light of the Supreme Court's *Janus* decision



Foundation comments urge federal agencies to fully protect the First Amendment rights secured by Mark Janus, pictured here after arguments at the Supreme Court with his Foundation staff attorney William Messenger.

last year.

In that case, the High Court held that requiring public employees to pay union dues or fees without their consent violates the employees' First Amendment rights "by compelling them to subsidize private speech on matters of substantial public concern." Justice Samuel Alito's opinion for the court further ruled that no union dues or fees could be taken from a public employee "unless the employee affirmatively consents to pay" using a "freely given" waiver of his or her First Amendment rights.

Consistent with that standard, the Foundation's comments urge the FLRA to issue guidance to agencies that they "must cease deducting union dues from the

wages of employees who signed a dues deduction form that does not satisfy the [*Janus*] standard." According to Department of Labor statistics, nearly one million federal employees -- 26.4% of all federal workers -- are union members, many of them likely having dues deducted from their paychecks despite never having knowingly waived their First Amendment right not to subsidize union activities.

The Foundation comments make clear that these dues deductions should cease in the wake of *Janus*. To comply with *Janus*, workers wanting to voluntarily pay union dues can either provide the government with a valid waiver of their rights or pay dues on their own without using taxpayer-funded payroll systems to forward the money to union officials. (See Page 6 for more details

See 'Foundation Issues Advice' page 7

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Foundation Assists Workers During UAW Union Boss-Ordered GM Strike

Strike order comes during growing UAW boss corruption and embezzlement investigation

DETROIT, MI – In September, United Auto Workers (UAW) union bosses ordered tens of thousands of General Motors workers on strike. The strike came as federal prosecutors were intensifying their investigation into embezzlement and corruption within the UAW hierarchy. Just days before the strike, the probe had reached the top levels of the UAW when FBI agents raided the homes of the union's current president and his predecessor.

Amid the scandal and union boss-instigated strike, National Right to Work Legal Defense Foundation staff attorneys were assisting several Michigan workers in legal challenges to the coercive practices of UAW officials. Additionally, Foundation Legal Information staff publicized a "special legal notice" directed at workers affected by the strike to ensure they knew their legal rights despite persistent union misinformation and threats.

GM Worker Stands Up to UAW Discrimination

Joseph Small, a stamping metal repair worker at a Lansing, Michigan, GM plant, filed a federal



With free aid from the Foundation, Ford employee Lloyd Stoner won a unanimous ruling from the NLRB which ordered UAW bosses to refund illegally seized dues.

charge with the National Labor Relations Board (NLRB) right before the strike unfolded with free aid from Foundation staff attorneys. Small, who is not a UAW member and is not required to pay fees to the union because of Michigan's Right to Work Law, asserted in his charge that UAW officials "heavily involved [themselves] in the interview process" for a promotion for which he was being considered.

Small was passed over for the position, which went to a union member. Small's charge notes that

a union representative later "stated that [Small] did not get the position because [he] was not paying union dues," a clear violation of federal labor law.

According to the National Labor Relations Act, workers have the right to refrain from union activities and neither union officials nor management can discriminate against employees based on their union membership status.

Ford Worker Wins Unanimous NLRB Ruling

Ford Motor Company worker Lloyd Stoner, who works at the company's facility in Dearborn, Michigan, won a second victory in defense of his rights this August with free legal aid from the Foundation.

Stoner, who had originally charged UAW officials and Ford with illegally seizing dues from his paycheck despite his previously resigning his union membership and revoking his dues deduction authorization, received a unanimous ruling from a three-member panel of the NLRB in Washington, D.C. The labor board directed UAW officials to make Stoner whole for the dues they illegally took.

The NLRB also ordered UAW officials to immediately honor any other employees' membership resignations. Stoner had earlier won a favorable settlement from Ford for its role in blocking him from exercising his rights.

"UAW union officials continue to show a willingness to break the law, even violating the rights of the very workers they claim to represent," observed National Right to Work Foundation Vice President Patrick Semmens. "Whether it be federal corruption prosecutions or unfair labor practice charges at the NLRB, UAW bosses must be held accountable when they break the law." ✚

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.

Grocery Workers Win Cases Against UFCW Union Bosses for Illegal Strike Threats

Union officials forced to refund seized dues, cease misleading workers about their rights

BOSTON, MA – This September, National Right to Work Legal Defense Foundation staff attorneys won precedent-setting settlements for Massachusetts Stop & Shop employees Saood Rafique and Matthew Coffey. The two men charged United Food and Commercial Workers (UFCW) union agents with multiple violations of their rights during the April 2019 union boss-ordered strike on the grocery chain. Rather than face continued prosecution, union officials settled their cases by remedying all of the violations of the workers' rights stated in their respective unfair labor practice charges against the union.

Both Coffey and Rafique were misled by union agents from the start of their employments into thinking that joining the UFCW was a condition of employment at Stop & Shop. Such an arrangement, sometimes called a “closed shop,” was outlawed by the Taft-Hartley Act in 1947. UFCW bosses also charged each of them full union dues illegally for years.

UFCW Agents Ramp Up Violations During Strike

Once the strike was ordered by UFCW bosses in April, Coffey and Rafique both found out -- independently of what any union official had told them -- that union membership could not be mandated as a condition of employment and that they had the right to rebuff the strike order and return to work.

Because they exercised their right to return to work, union agents targeted Coffey and Rafique with vicious campaigns of intimidation during the strike. Their initial unfair labor practice charges, filed with free assistance from the Foundation, reported that UFCW agents hit them with threats of termination, harassment and other forms of illegal retaliation after they



Democrat presidential candidate Elizabeth Warren, seen here on the UFCW picket lines in April, sided with the union bosses who violated workers' rights in an effort to secure their forced-dues-backed support in her campaign.

decided to go back to work.

“The union threatened that, as soon as the company came back, I was gonna be fired immediately, because in order to work at Stop & Shop they claimed that you had to be part of the union,” Coffey told CBS Western Mass News during the strike. “Which was a blatant lie.”

Coffey and Rafique also experienced illegal retaliation after the strike, with Coffey receiving a letter from union officials demanding he appear before a UFCW kangaroo court to be punished for exercising his right to keep working, and Rafique reporting that UFCW agents had told his coworkers to spy on him.

Settlements Order Remedies for All UFCW Rights Abuses

The class-wide settlements for Coffey and Rafique, approved by National Labor Relations Board (NLRB) Region 1 in Boston, order UFCW bosses to post remedial rights notices in over 70 Stop & Shop stores, as well as on the internet and in the union's monthly newsletter, to inform all employees of their rights to both abstain from union membership and pay only the

part of union fees directly germane to bargaining. These settlements enforce the Foundation-won *CWA v. Beck* Supreme Court decision.

The remedial notices also announce that UFCW officials will return to Coffey and Rafique dues seized from them in violation of their *Beck* rights. Also included in the notices are declarations that UFCW officials will “process resignations and objections of [all] bargaining unit employees who have resigned” union membership and “will not threaten [employees] with internal union discipline or fines” for returning to work during a strike. The settlements totally remedy the unfair labor practices suffered by the two grocery workers.

“These victories should serve as a reminder to all American employees -- and union officials -- that the individual rights of workers don't cease to exist when union bosses call a strike,” commented Ray LaJeunesse, Vice President and Legal Director of the National Right to Work Foundation. “Workers who are subjected to strike intimidation or union bosses' illegal misinformation can turn to the National Right to Work

Labor Day 2019: National Right to Work

The Detroit News

Close union loophole in federal anti-extortion law

At the federal level, extortion is prosecuted under the 1946 Hobbs Act, which makes violent extortion a federal crime But in a 1973 United States Supreme Court ruling, union bosses gained an exemption for themselves in the *Enmons* case. *Enmons* put a stop to all federal prosecutions for extortion committed for "legitimate union objectives," regardless of what means the thugs use to get what they want.

—Op-ed in *The Detroit News*, September 1, 2019



MORNINGS ON THE MALL

"The idea of giving someone the privilege of forcing you to . . . associate with them is really the original sin of labor policy."

Mark Mix on WMAL Washington, *Mornings on the Mall*, September 1, 2019



We need to pass the National Right-to-Work Act. No one should be forced to join a union.

The [Railway Labor Act] even blocks states from protecting workers in the railroad and airline industries under state laws, meaning workers covered under that law can still be fired for refusing to pay union dues or fees despite working in a right-to-work state.

The National Right-to-Work Act removes the forced dues authorizations . . . and thereby restores employees' absolute right to refrain from funding a union they don't want and never asked for.

—Op-ed in *USA Today*, September 1, 2019

LAS VEGAS REVIEW-JOURNAL

Right-to-work law boosts the Nevada economy

And those jobs that right-to-work states are adding are high-paying jobs. In fact, when cost of living is taken into account, workers and other residents in Nevada take in almost \$1,000 more per year in disposable income than Californians and more than \$6,000 more than residents of forced-unionism Oregon.

—Op-ed in *Las Vegas Review-Journal*, September 1, 2019

Work in the News

Foundation Legal Information staff got the Right to Work message out in media outlets across the country for Labor Day 2019. Here are some of the highlights:

DAILY CALLER

Auto Workers Strike Against GM Comes as Union Leaders Face Corruption Investigation

On Jan. 9, 2015, [Former UAW President Norwood] Jewell "spent \$7,569 on dinner at LG's Prime Steakhouse in Palm Springs, Calif." Over the course of that same month, Jewell "spent \$1,267 at Indian Canyons Golf Resort" in Palm Springs . . .

All of this was paid for by the very auto executives who sat across the table from Jewell . . . which as a consequence of the Obama rollback of federal oversight of union finances **did not have to disclose to the Labor Department how it spends its funds.**

— Op-ed in *The Daily Caller*, September 4, 2019



Free Lance-Star

Right to Work has been good for Virginia. Let's keep it that way

There is a strong correlation between right to work and higher real personal income . . . The real spendable income per household in Virginia was \$65,959 -- over \$13,000 higher than the forced-unionism state average.

— Op-ed in *Fredricksburg Free Lance-Star*, September 5, 2019



"Over the last seven, eight, nine years, we've made tremendous progress . . . a majority of states now protect private sector workers from being forced to pay dues or fees to a union."

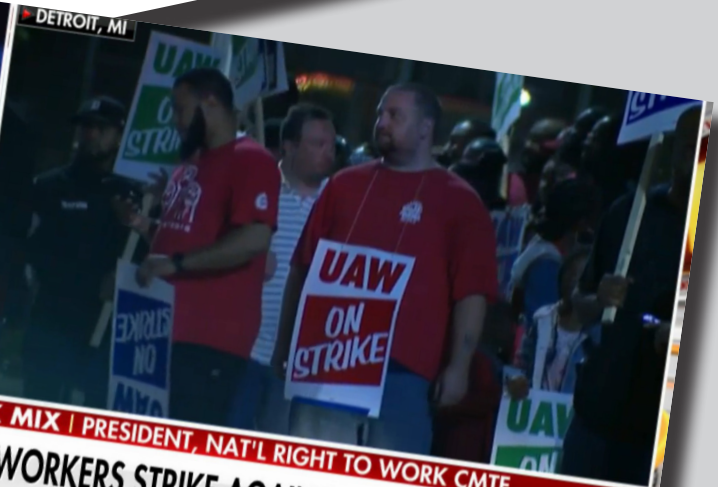
Mark Mix on *The Lars Larson Show* September 3, 2019

LEXINGTON HERALD LEADER

Kentucky is thriving under Right to Work. But will it continue?

In the two years since [enacting Right to Work], the Commonwealth of Kentucky shattered its yearly business investment records . . . In November, Kentucky voters will have to choose whether to continue on the path of economic growth and worker freedom or take several giant steps backwards and side with the union boss elite.

— Op-ed in *Lexington Herald Leader*, August 30, 2019



▶ MARK MIX | PRESIDENT, NAT'L RIGHT TO WORK CMTE
UNITED AUTO WORKERS STRIKE AGAINST GENERAL MOTORS

THE WALL STREET JOURNAL.

A15

OPINION

Friday, August 30, 2019

Governments Must Secure Employees' Janus Rights

The feds, and many states and localities, still deduct union dues from paychecks without consent.

by Mark Mix and William Messenger

Fourteen months ago the Supreme Court held that the First Amendment protects government employees from being forced to subsidize unions. *Janus v. AFSCME* armed that some five million state and local workers have the legal right to stop such payments.

Another aspect of *Janus*, however, has been overshadowed. The decision requires that the government obtain proof that workers voluntarily, knowingly and intelligently waived their First Amendment rights not to subsidize union speech before deducting union dues or fees from their paychecks. "To be effective, the waiver must be freely given and shown by 'clear and compelling' evidence," Justice Samuel Alito wrote. "Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met."

Yet the federal government and many states and localities continue to deduct union dues without evidence that workers waived their speech rights, usually based on pre-*Janus* authorization forms that come nowhere close to demonstrating a waiver. Labor Department figures suggest unconstitutional deductions could be coming out of the paychecks of as many as 7.2 million government employees nationwide. The fix is simple: Governments must cease transferring wages to unions until they amend their dues-deduction policies to comply with *Janus*.

The National Right to Work Foundation has filed comments urging the Federal Labor Relations

Authority to issue guidance to federal agencies that they "must cease deducting union dues from the wages of employees who signed a dues deduction form that does not satisfy the [*Janus*] standard." Such an action won't prevent workers from paying dues to a union if they choose. Workers can waive their First Amendment rights, or union officials can collect dues without using government payroll systems.

Politicians in state capitals where Big Labor has a stranglehold are resisting compliance with *Janus*. Faced with both government and union resistance, public employees have filed dozens of lawsuits seeking to stop unions from seizing money from their paychecks.

But not all elected officials are so beholden to union bosses. Some are willing to put employee freedom before the interests of union officials. Alaska started that process Tuesday when, at the request of Gov. Mike Dunleavy, Attorney General Kevin Clarkson issued a formal opinion delineating how the state must change its payroll process to comply with *Janus* by ensuring that employees "freely and knowingly consented to have dues deducted from their paychecks." Alaska's solution includes stopping dues deductions absent an annual renewal of the waiver.

Hundreds of millions of dollars are being taken out of workers' paychecks each month without any evidence that they waived their First Amendment right not to fund union activities, including partisan electioneering. Other state officials, along with federal agencies, should follow Alaska's example.

The Feds, and many states and localities, still deduct union dues from paychecks without consent.

Mr. Mix is president of the National Right to Work Legal Defense Foundation. Mr. Messenger, a foundation staff attorney, represented Mark Janus at the high court. (Reprinted from The Wall Street Journal)

Foundation Issues Advice to Protect First Amendment *Janus* Rights

continued from page 1

on the dues standard required by *Janus*.)

The Foundation's comments to the FLRA further argue that, even where workers provide a valid authorization for dues deductions that meets the *Janus* standard, the government shouldn't block them from revoking that authorization if the request is submitted at any time at least a year after the *Janus*-compliant authorization was obtained.

Foundation Comments Push to End Union-Created "Window Period" Scheme

Unfortunately, agencies and union officials often prohibit federal employees from stopping the seizure of union dues from their wages except during short annual escape periods. The comments filed by the National Right to Work Foundation say that this practice does not comply with *Janus* either.

"The *Janus* precedent is very clear about this: Without affirmative and knowing waivers from public



Alaska Gov. Mike Dunleavy (left), following an opinion from Attorney General Kevin Clarkson, ordered all Alaska state agencies to protect state employees' First Amendment rights under *Janus*.

workers, government entities cannot collect union dues without violating a worker's First Amendment rights," commented National Right to Work Foundation President Mark Mix. "Currently, the government seizes union dues from almost one million federal employees in violation of the *Janus* decision's First Amendment standard. Federal agencies are obligated to protect

workers' constitutional rights in this rulemaking process."

Since the *Janus* decision last year, Foundation staff attorneys have been fighting to ensure public workers' First Amendment rights are protected, litigating more than 30 cases in federal courts across the country to enforce the landmark ruling. ✚

Workers Win Cases After UFCW Union Boss Rights Violations

continued from page 3

Foundation for free legal aid to hold union bosses accountable for their illegal actions."

New York Employee Also Wins Case After Illegal Dues Demands

The two New England grocery workers were not the only Stop & Shop employees to win settlements against the UFCW recently. John Smith, a former employee of the Stop & Shop branch in New Hyde Park, New York, also won a victory with Foundation aid this September.

Smith had charged UFCW agents with similarly misinforming

him that the grocery store was a "closed shop" when he was hired in November 2018. When he asked about how to resign his union membership, he was misled by several union officials about his right to resign and cut off a portion of union dues.

Smith's charge also noted that union officials never apprised him of his right as a non-member to pay only the amount of union fees directly related to bargaining, as the Foundation-won *CWA v. Beck* Supreme Court decision requires.

His settlement, approved by NLRB Region 29 in Brooklyn, orders union officials to post notices that union officials will inform

employees of their rights to refrain from formal union membership and pay only union fees directly related to bargaining. Smith will also be refunded dues that were taken in violation of his *Beck* rights.

"As Smith's case shows, union bosses won't hesitate to mislead workers regarding their legal right to resign their union membership and full union dues," added LaJeunesse. "Unfortunately this type of misinformation will continue to be spread as long as workers lack Right to Work protections that make union membership and financial support completely voluntary." ✚

Janus v. AFSCME Update: Appeals Court Asked to Set Precedent on Return of Forced Dues

Although the Supreme Court ruled over a year ago in *Janus v. AFSCME* that requiring public sector workers to pay money to union officials violates the First Amendment, Mark Janus' case continues. The case now concerns whether AFSCME union officials can be required to return dues seized from him in violation of his rights before the *Janus* decision was issued.

While Janus is seeking the return of \$3,000 of his own money, the stakes are far higher than that. A precedent that union officials can be required to refund money seized prior to *Janus* going back as far as the statute of limitations allows could result in hundreds of millions of dollars returned to public workers, including more than \$120 million just in cases already filed by National Right to Work Foundation staff attorneys.

However, union bosses are attempting to keep the money seized from workers in violation of the First Amendment, even though Supreme Court decisions are retroactive.

In September the U.S. Seventh Circuit Court of Appeals heard arguments in the case, which could result in the first appellate decision on the issue. Foundation staff attorney William Messenger, who argued the case at the U.S. Supreme Court argues that Janus, and implicitly hundreds of thousands of other public employees, are entitled to damages for the compulsory fees seized from them in violation of their First Amendment rights, plus interest. ✚



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

As 2019 comes to a close, I have been reflecting on how much the National Right to Work Foundation has accomplished with your help this year.

Looking back on 2019, and looking ahead to 2020, I'm grateful for all you have done to help us battle the abuses of forced unionism -- and for your continued support as we face new challenges and combat forced unionism in the next year.

As you'll read in this issue of **Foundation Action**, the Foundation has gone on offense against greedy and obstinate government union bosses who still refuse to comply with our groundbreaking *Janus v. AFSCME* precedent won at the United States Supreme Court in 2018. Through continued legal action and advocacy in court and at administrative agencies and executive offices, it is vital you and I ensure that *Janus* is vigorously enforced.

Meanwhile, forced-dues-hungry union bosses across the country are ramping up their threats to unleash a wave of economically devastating strikes. But, as documented in this issue, the Foundation stands up for independent-minded workers who suffer vicious campaigns of harassment and intimidation just for exercising their rights to resign from union membership and return to work to provide for their families.

These critical battles rage on at a time when union bosses have already started unleashing another BILLION-dollar partisan electioneering blitz with the goal of total takeover of power in Washington, D.C. Heading into 2020, your Foundation must stand ready to take additional action against the illegal use of forced-dues to subsidize Big Labor's radical political agenda.

Again, I'm grateful for the unwavering enthusiasm and investment of Right to Work supporters like you. Thank you for making our work possible.

Sincerely,

Mark Mix