



Foundation Action

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

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Appeals Court Upholds Foundation Victory against Forced Dues for Lobbying

Decade-long NLRB battle results in Appeals Court win for Rhode Island nurse

BOSTON, MA – Longtime Rhode Island-based nurse Jeanette Geary has again prevailed in a legal battle waged for over a decade by United Nurses and Allied Professionals (UNAP) union bosses, who seek to force her to fund union lobbying as a condition of keeping her job.

Geary, who worked as a nurse at Kent Hospital in Warwick, Rhode Island, filed an unfair labor practice charge in 2009 against the UNAP union with free legal aid from National Right to Work Legal Defense Foundation staff attorneys. She filed charges after the union forced her and other employees to pay for union lobbying activities, and also failed to provide evidence of a legally required independent audit of its breakdown of expenditures.

Foundation-Won Legal Precedents Cited

In the 1988 Foundation-won *Beck* case, the United States Supreme Court ruled that private sector workers in states without Right to Work protections could be forced to pay some union fees as a condition of employment, but those fees could not be used for political activity like lobbying.

Despite this, the NLRB had decided against Geary in 2012, but that decision was invalidated by the Supreme Court's holding in *NLRB v. Noel Canning* that the Board lacked a valid quorum because of two unconstitutional "recess appointments" then-President



After fighting since 2009, Rhode Island nurse Jeanette Geary triumphed over UNAP union bosses in September 2020. Her victory at the First Circuit let stand an NLRB decision that declares no worker can be forced to fund any union lobbying.

Obama had made. Five years later, Geary's case was the only remaining case invalidated by *Noel Canning* still pending a decision by a valid NLRB panel.

In January 2019, Foundation staff attorneys filed a mandamus petition at the U.S. Court of Appeals for the District of Columbia Circuit seeking a court order that the NLRB promptly decide Geary's case. The Appeals Court then ordered the NLRB to respond to that petition by March 4, 2019.

NLRB Ruled Workers Can Never Be Forced to Fund Union Lobbying

The NLRB issued its decision on March 1 of that year, just ahead of the deadline. In its decision, the NLRB ruled 3-1 that union officials

violate workers' rights by forcing non-members to fund union lobbying activities. It also ruled

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Airline Workers Ask Appeals Courts to Invalidate Union Dues Opt-Out Schemes

Cases challenge requirement that workers opt out of union political spending or else pay full dues

NEW ORLEANS, LA – With free legal representation from National Right to Work Legal Defense Foundation staff attorneys, two airline workers have filed cases challenging union boss policies that require workers to opt out in order to exercise their First Amendment right not to fund union political activities, as recognized in the Foundation-argued 2018 *Janus v. AFSCME* Supreme Court decision.

The two federal class-action lawsuits were brought for United Airlines fleet service employee Arthur Baisley and JetBlue Airways pilot Christian Popp. They are currently pending in the U.S. Courts of Appeals for the Fifth and Eleventh Circuits respectively.



Just “plane” wrong: JetBlue Airways pilot Christian Popp is fighting at the Eleventh Circuit Court to end a scheme that deducts union political expenses out of workers’ paychecks without their consent.

Workers Challenge Compelled Political Speech

Baisley’s case against the International Association of Machinists (IAM) union has been fully briefed and is tentatively set for oral argument the week of November 30. Meanwhile, the opening brief for Popp’s case against the Air Line Pilots Association (ALPA) union was filed in early

October.

The lawsuits contend that under *Janus* and the 2012 *Knox v. SEIU* Supreme Court cases -- both argued and won by Foundation staff attorneys -- no union dues or fees can be charged for union political activities without a worker’s affirmative consent.

Despite this, union officials at the IAM and ALPA enforce complicated opt-out policies that require workers

to object to funding union political activities or else pay full union dues. Foundation staff attorneys argue that the *Janus* decision’s opt-in requirement applies to airline and railroad employees covered by the Railway Labor Act (RLA), taken together with longstanding precedent protecting private sector workers from being required to pay for union political and ideological activities.

Mr. Baisley and Mr. Popp both work in Right to Work states (Texas and Florida, respectively), but the RLA preempts state law. Consequently, they can be forced to pay union dues or fees or be fired. Even under the RLA, however, union bosses cannot legally force workers to pay for political activities.

Cases Could Expand *Janus* Protections to Private Sector

The lawsuits argue IAM and ALPA’s opt-out policies are designed to trap unwilling participants into full dues in violation of their First Amendment rights. This forces workers to subsidize union political activities against their will, including the part of full dues that union officials use to support their radical political agenda and handpicked candidates for office.

“IAM and ALPA union officials have demonstrated a blatant disregard for the rights of the very workers they claim to represent by creating complicated obstacles for independent-minded workers who want to exercise their right not to fund union ideological activities,” said National Right to Work Foundation Vice President Patrick Semmens. “Although *Janus*’ biggest impact was to secure the First Amendment rights of all public employees across the nation not to be required to fund Big Labor, these cases demonstrate that *Janus*’ implications can also protect the rights of private sector workers.”

Foundation Action

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Cases Seeking Millions in Refunds of Forced Fees under *Janus* Move Forward

Split Appeals Court decision bolsters petition for Supreme Court to take up issue

PHILADELPHIA, PA – A National Right to Work Foundation-backed class-action lawsuit for Pennsylvania state employees seeking refunds of unconstitutionally seized union fees resulted in a split decision from the U.S. Third Circuit Court of Appeals in August. This ruling cast serious doubt on a favorite union boss argument used to avoid refunding dues seized in violation of workers' First Amendment rights.

The employees were defending their rights under the landmark 2018 Foundation-won *Janus v. AFSCME* Supreme Court ruling. In *Janus*, the Court sided with former Illinois child support specialist Mark Janus and agreed with Foundation staff attorneys that requiring any public sector worker to pay union dues or fees as a condition of employment is a First Amendment violation. The Court also ruled that union dues can only be taken from public servants with their affirmative and knowing consent.

The plaintiffs in *Wenzig v. Service Employees International Union (SEIU) Local 668* are seeking a ruling that SEIU officials must refund dues taken from employee paychecks in contravention of this standard before the *Janus* ruling came down. Union bosses used, as they have done in almost all similar cases, a dubious “good faith” argument to justify not refunding the dues to the victimized workers. In the split decision, two of the three judges rejected the so-called “good faith” theory.

Supreme Court Asked to End Lower Court Confusion on *Janus* Refunds

Foundation staff attorneys cited the growing confusion among federal judges on forced-union-fee refunds as a vital reason the Supreme Court should hear the continuation of *Janus v. AFSCME*. In a supplemental brief, Foundation



Veteran Foundation staff attorney William Messenger made history when he argued and won the *Janus* case before the High Court in 2018. He still represents *Janus* and others demanding forced-fee refunds.

attorneys wrote that *Wenzig* “supports granting review here because a majority of the Third Circuit panel rejected the good faith defense recognized by the Seventh Circuit here and by the Second, Sixth, and Ninth Circuits.”

“The Court should finally resolve this important issue and hold there is no good faith defense to Section 1983,” the brief adds. Section 1983 is the federal law requiring that those who deprive people of their constitutional rights “under color of any statute . . . shall be liable to the party injured.”

This September, Foundation staff attorneys also filed the final reply brief supporting the Supreme Court petition in *Casanova v. International Association of Machinists (IAM), Local 701*, another case seeking review from the High Court. It also cites the Third Circuit’s split

decision. Plaintiff Benito Casanova, a Chicago Transit Authority employee, seeks to get back money that IAM bosses took from his paycheck and the paychecks of his colleagues in violation of their First Amendment rights prior to the *Janus* decision.

Foundation Leading Worker Efforts to Reclaim Fees Seized Against *Janus*

The workers in these cases and many others are collectively fighting for millions of dollars in pilfered money to be returned to them. Foundation attorneys currently represent these public servants in nearly 20 similar cases, together pursuing about \$130 million in refunds to workers.

“Given the clarity of the *Janus* First Amendment standard, it’s bewildering that federal judges have not yet widely discredited union boss arguments that serve only to deny public sector workers refunds of money that the High Court itself ruled should have never been taken from them in the first place,” observed National Right to Work Foundation President Mark Mix. “The High Court must swiftly disabuse lower courts of their misunderstandings and provide justice to workers who have been waiting years for their hard-earned money to be returned.” ✚

**National Right to Work
Legal Defense Foundation**

**Rated “A”
by
CharityWatch**

Source: *Charity Rating Guide*
October 2020
American Institute of Philanthropy

Labor Day 2020: Fight For Worker Freedom Makes Headlines

This year marks a pivotal point in the battle against compulsory unionism, and Legal Information staff spread the Right to Work message in over 50 newspapers and dozens of TV and radio programs on and around Labor Day, including . . .

The Detroit News

To address UAW corruption, target how union bosses harm rank and file

- Op-ed in *The Detroit News*, September 4, 2020

Richmond Times-Dispatch

This Labor Day, celebrate the freedom and prosperity of Virginia's right-to-work law

Despite the freedom and prosperity that the right to work helps bring to the commonwealth, **Virginians shouldn't take it for granted, especially after attempts by legislators in Richmond earlier this year to repeal the state's right-to-work law and impose forced union dues.**

- Op-ed in the *Richmond Times-Dispatch*, September 6, 2020

The Washington Times

Joe Biden and Kamala Harris' disdain for the American worker

Kamala Harris, the junior U.S. senator from California and Joe Biden's running mate knows full well that many employees who are subject to union monopoly bargaining would be better off if they weren't. **In fact, she even told the U.S. Supreme Court that very thing.**

- Op-ed in *The Washington Times*, September 1, 2020



BOSTON Herald

Forced union dues casts pall over workers on Labor Day

- Op-ed in the *Boston Herald*, September 4, 2020

Newsweek

Although union officials bristle at the heightened levels of accountability that come with letting workers decide individually whether or not to financially support a labor union, **the American people overwhelmingly support giving workers a choice.** Poll after poll shows that at least eight in 10 Americans oppose forced union dues and affiliation.

- Op-ed in *Newsweek*, September 2, 2020



"Now [union bosses] are wards of the political process. That's where you get the disconnect between rank-and-file workers and union officials."

- Mark Mix on *The Larry O'Connor Show*, WMAL Washington, September 7, 2020

Newsweek
The Larry O'Connor Show (WMAL)
The Washington Times
Boston Herald
Baltimore Sun
The Vicki McKenna Show (WIBA)
Liquid Lunch (BizTV)
Jeff Crouere (WGSO)
Richmond Times-Dispatch
The Detroit News
The Federalist
Simon Conway (WHO)
Washington Examiner
The Epoch Times
Greg Kelly Reports (Newsmax TV)
One America News Network
Idaho State Journal
Des Moines Register
Albuquerque Journal
Daily Camera
Duluth News-Tribune
The Trentonian
Adirondack Daily Enterprise

. . . and many more!

Foundation Defends MI Rule, Public Servants Nationwide from Anti-*Janus* Schemes

Union officials sued to overturn Foundation-backed rule creating opt-in system for union dues

LANSING, MI – Relying on arguments presented by a National Right to Work Legal Defense Foundation legal brief, a federal court has denied an injunction against a new Michigan Civil Service Commission (MiCSC) rule designed to protect state workers' First Amendment *Janus* rights.

The amicus brief was filed after lawyers from several major Michigan unions sued to overturn the protections, which block dues seizures ruled unconstitutional in the 2018 Right to Work Foundation-won *Janus v. AFSCME* Supreme Court decision.

The rule was finalized by MiCSC in July, following detailed comments submitted by the Foundation. The arrangement alters the state's union dues deduction system to require the affirmative and knowing consent of workers before dues can be taken from their paychecks, as per the Court's First Amendment standard laid out in *Janus*.

Michigan Public Servants Will Get Yearly Nudge About *Janus* Rights

MiCSC will now remind Wolverine State public servants annually that they have a right not to subsidize union bosses' activities. Further, state employees who still want to have dues deducted must annually confirm that they want to waive that right and are voluntarily authorizing union dues deductions from their paychecks.

Under the new rule, union bosses are not able to siphon dues or fees from the paychecks of employees who aren't aware of their right not to pay union dues, or on the basis of years-old dues authorization forms that may not reflect current consent.

In September of 2019, Alaska Gov. Mike Dunleavy signed an executive order creating similar *Janus* protections for Alaska state employees. Foundation staff



“That was so un-American to us,” New Jersey teacher Susan Fischer told NJTV News of forced union fees in 2018. Two years after *Janus*, she is still fighting to remove illegal union boss-created restrictions on *Janus* rights in the state.

attorneys are currently representing an Alaskan state vocational instructor seeking to enforce his First Amendment rights under *Janus* and that order.

Additionally, Texas Attorney General Ken Paxton and Indiana Attorney General Curtis Hill both issued legal opinions earlier this year, urging public employers to notify employees that they have a First Amendment right to refuse to fund a union unless they opt in to such payments. This follows a *Wall Street Journal* op-ed last year by Foundation President Mark Mix and staff attorney William Messenger, which encouraged states to take action to proactively defend employees' rights under the landmark decision. Messenger argued and won *Janus* before the Supreme Court.

New Jersey Teachers Battle Union-Backed Rights Restriction

The efforts by states to implement *Janus* rights safeguards come as public workers across the country

continue to challenge schemes which block them from exercising their *Janus* rights outside a brief, union-created “escape period,” which is often just a few days a year, or even once every three years.

New Jersey teachers Susan Fischer and Jeanette Speck are defending their rights and the rights of their fellow educators in a class-action case against the New Jersey Education Association (NJEA), now pending before the U.S. Court of Appeals for the Third Circuit. Fischer and Speck attempted to exercise their right to cut off dues to the union just days after the Supreme Court recognized this right in *Janus*.

Union-label politicians, anticipating the High Court's ruling, had enacted a state law the month before *Janus* was decided, cutting the time a public servant could exercise his or her *Janus* rights down to just 10 days per year. Oral arguments in the case took place in late September with Foundation staff attorney William Messenger arguing the case before a three-judge panel.

If Fischer and Speck's lawsuit

See 'Foundation Protects' page 7

Spotlight: Zimdahl Studio Assists Spread of Right to Work Message



Above are just a few of the interviews conducted thanks to the Norma Zimdahl Studio.

Initially established over a decade ago and upgraded many times since, the Norma Zimdahl Studio located at the National Right to Work headquarters in Virginia continues to be a critical tool in the Foundation's media efforts and outreach to the public.

With its cutting-edge video capabilities, the studio has allowed Foundation staff to reach workers and the public at large, educating them about the problems of coercive unionism and informing workers of their rights and the availability of free legal aid from the Foundation to vindicate their rights. Videos produced in the Zimdahl Studio have been viewed well over one million times on YouTube alone.



Norma Zimdahl

This critical piece of the Foundation's legal information program has become especially important in recent months with COVID-19 and the challenges of in-person meetings and interviews. While in the past Foundation experts may have traveled to a television station studio to discuss Foundation cases and Big Labor's coercive agenda that tramples the rights of individual workers, many of those interviews now happen directly from the Zimdahl Studio.

National Right to Work Foundation President Mark Mix observed about the studio: "We are indebted to Norma Zimdahl and others who have generously supported our work in many ways, but are especially grateful for Norma's vision to combine new technology and innovation to spread the message of individual freedom in the workplace! We are humbled and encouraged by Norma and all our supporters who allow us to expose the injustices of forced unionism every day."

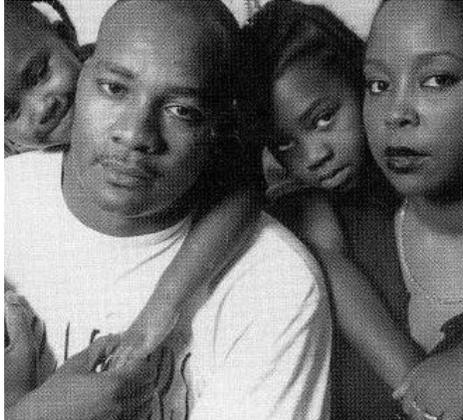
Foundation Urges NLRB to Protect Workers' Privacy from Union Organizers

Comments filed to end Obama-era rule forcing disclosure of workers' private information

WASHINGTON, DC – The National Right to Work Legal Defense Foundation submitted comments to the National Labor Relations Board (NLRB) this September in support of a proposed rule change that would better protect workers' privacy in the run-up to representation elections.

The new rule, if adopted by the Board, would eliminate a requirement imposed by the Obama-era NLRB in 2014 that expanded the information employers must provide to union organizers before a vote to include personal phone numbers and email addresses. The current rule requires that union officials be provided that information even over the objections of individual workers.

In the comments, Foundation Vice President and Legal Director Raymond LaJeunesse argues that the 2014 rule violates workers' privacy and leaves them vulnerable to harassment, identity theft and property crime. As the comments point out, union militants have a



UPS driver Rod Carter was stabbed by Teamsters militants for providing for his family during a strike, after receiving late-night threats on his home phone number.

long history of misusing workers' private information.

For example, the comments recount how "UPS employee Rod Carter began to receive threatening late-night phone calls following his opposition to a Teamsters boss-ordered strike, and was ultimately stabbed with an ice pick by Teamsters militants who were able to track his driving route." Foundation

staff attorneys filed a racketeering and civil conspiracy case that won a monetary settlement for Carter from Teamsters Local 769 for its involvement in the bloody attack.

The NLRB's current rules purport to limit union officials' use of the personal information to "the representation proceeding" and other NLRB matters. Foundation attorneys argue in the comments that this supposed limitation is "meaningless" and that "the only way to protect employees' privacy and safety in the first place is not to compel disclosure of their personal information to unions, or, at the very least, to allow employees to opt out of any mandatory disclosure of their personal information."

"Given the long and sordid history of harassment, identity theft, stalking and worse by union militants against workers who refuse to toe the union line, limiting the private contact information required to be handed over to union organizers is just plain common sense," stated LaJeunesse. †

Foundation Protects Public Workers from Illegal Janus Restrictions

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is successful, educators across New Jersey will be free to cut off dues at any time, and the state law limiting those rights to a 10-day window would be struck down as unconstitutional. Additionally, Fischer, Speck and their coworkers who also sought to exercise their *Janus* rights would get refunds of all dues that were extracted from their paychecks under the unconstitutional arrangement.

Decorated Las Vegas Officer Defends Her First Amendment *Janus* Rights

Elsewhere in the country, Las Vegas police officer Melodie DePierro sued both the Las Vegas Police Protective Association

(PPA) union and the Las Vegas Metropolitan Police Department (LVMPD) for illegally seizing union dues from her paycheck using such an "escape period" scheme.

According to her complaint filed by Foundation staff attorneys in the U.S. District Court for the District of Nevada, in January 2020 she sent letters to both union officials and the LVMPD resigning her membership and requesting a stop of all union dues deductions. Her complaint reports that union and police department agents rejected that and a later request, citing a "narrow escape period between October 1 and October 20 each year."

DePierro, in addition to bravely asserting her rights, stands up for her community. The *Las Vegas*

Review-Journal reported that she helped protect a hospital during the October 2017 mass shooting at the Route 91 Harvest music festival in Las Vegas, springing into action despite being off-duty.

"Officer DePierro has an exceptional history of keeping Las Vegas safe. Instead of respecting her First Amendment *Janus* rights, PPA union bosses have decided to impose an unconstitutional policy on her just to keep her hard-earned money rolling into their coffers," commented National Right to Work Foundation Vice President Patrick Semmens. "Fortunately, more and more states are beginning to grow wise to the fact that union boss-devised traps are widespread, and as such are moving to secure their public servants' *Janus* rights." †

Victory Against Forced Dues for Lobbying

continued from page 1

that union officials must provide verification that the union expenses they charge to non-members have been independently audited.

Unwilling to stop forcing workers to fund lobbying activities, UNAP union bosses asked the First Circuit Court of Appeals to overturn this ruling. Oral arguments were held in March 2020 before a panel of three judges at the First Circuit Court of Appeals, including retired Supreme Court Justice David Souter, with veteran Foundation staff attorney Glenn Taubman arguing for Geary.

Appeals Court: Precedents Dictate Full Ban on Forced Dues for Lobbying

The court's ruling not only upheld the NLRB's decision in favor of Geary, it determined that a blanket ruling against charging non-member workers for union lobbying was the only solution that could be justified given various Supreme Court rulings, including cases brought by Foundation staff attorneys, about what workers can be forced to fund.

"In a long-overdue victory, Ms. Geary has successfully affirmed the right not to fund any union boss lobbying, a protection guaranteed by the Foundation-won *Beck* Supreme Court decision," commented National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. "No worker should be forced to pay for any union political activity, including lobbying. But, the fact that Ms. Geary had to endure this drawn out legal fight shows why Right to Work protections are needed for all employees, so individual workers can decide whether to subsidize union boss activities, political or not." ✎



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

As I write to you, we don't yet know the results of the elections.

But what I've already seen in recent months demonstrates why your National Right to Work Foundation's mission is more critical than ever.

Big Labor's game plan is crystal clear: Buy political influence using money seized from workers against their will and in violation of their rights.

With 8 in 10 Americans opposed to forced union dues, that's the only way union officials can advance towards their ultimate goal of forcing every worker in America to pay union dues.

Thank goodness independent-minded workers who oppose union bosses' radical political agenda can turn to the Foundation for help fighting back.

Foundation-won cases brought for the victims of Big Labor have already cut off hundreds of millions of dollars in forced-dues payments intended for union boss politics and lobbying.

But we're not done yet.

As you can read in this issue of **Foundation Action**, your Foundation is working in federal court, at the National Labor Relations Board, in state agencies and even at the U.S. Supreme Court, to defend workers from being forced to fund Big Labor's political agenda.

Through strategic litigation, your Foundation is working in the courts to one day end the corrupting influence of forced dues on our government.

Thank you for standing with us in this essential fight for freedom.

Sincerely,