



Foundation Action

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

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Right to Work Foundation Wins Defensive Victory at U.S. Supreme Court

***Unions have no
'constitutional right' to
forced dues for politics***

WASHINGTON, DC – In a unanimous 9-0 decision at the U.S. Supreme Court, the Justices ruled that union officials have no “constitutional right” to spend nonunion employees’ forced dues on certain political advocacy. The Supreme Court ruling is a critical defensive victory for the Right to Work movement, but the court declined to take what would have been a truly meaningful step forward.

On June 14, the High Court issued its decision in *Davenport v. Washington Education Association* (WEA), reversing a dangerous ruling by the Washington State Supreme Court. National Right to Work Foundation attorneys originally brought the *Davenport* case in 2001 on behalf of over 4,000 nonunion teachers from Washington State.

In the opinion, Justice Antonin Scalia unequivocally stated, “unions have no constitutional entitlement to the fees of nonmember employees.” The ruling also reiterated that Right to Work laws are absolutely constitutional.

The opinion went to great lengths to point out that union officials enjoy the



The National Right to Work Foundation helped Gary Davenport, pictured here with his family, achieve victory at the nation's highest court.

Foundation president Mark Mix. “But our attorneys are now examining possible steps to capitalize on aspects of the ruling.”

Foundation attorneys head off threat to Right to Work laws

Gary Davenport, the lead plaintiff, was a history teacher at Kentwood High School in Washington State when the case began. Washington – a forced unionism state – authorizes the firing of employees for refusal to pay union dues.

see **DAVENPORT** page 7

extraordinary power to compel union dues from nonunion employees, hinting that Right to Work laws are good public policy. “It is undeniably unusual for a government agency to give a private entity the power, in essence, to tax government employees...indeed, it is uncontested that it would be constitutional for Washington to eliminate agency fees entirely,” Scalia noted.

But in the process of striking down the Washington State Supreme Court’s gross misinterpretation of the First Amendment, the ruling merely reinstated a state campaign finance law, often called “paycheck protection,” which while well-intended, has proven ineffective.

“While we’re pleased with this important defensive victory, the High Court should have taken the opportunity Foundation attorneys presented to move the cause of freedom forward,” stated National Right to Work

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Plan Ahead: Further Employee Freedom Through Strategic Giving

Planned gifts generate tax savings and possible lifetime income benefits

Recent issues of *Foundation Action* have discussed the benefits of estate planning to further the Right to Work movement.

Of course, outright gifts of cash and securities provide immediate help to the Foundation's program while yielding tax deductions. Appreciated securities are normally subject to a capital gains tax when sold, but when they are contributed to a charity such as the Right to Work Foundation, gifted securities (owned for one year or more) are not subject to capital gains taxes while yielding a charitable tax deduction for the full fair market value of the securities.

The most common long-term gift is inclusion of the Foundation in a donor's will or living trust.

But there are other tools worthy of consideration, including the Charitable Lead Trust and the Charitable Remainder Trust.

If you would like our free informational brochure on any planned giving, please contact the Foundation's Strategic Program Director, Ginny Smith, toll free at 1-800-336-3600, ext. 3303. Of course, donors should also consult their tax advisor or estate planning attorney before finalizing any estate gift to the Foundation.

Charitable Lead Trust - A gift that comes back

Charitable Lead Trusts are frequently referred to as "the gift that comes back to you." A donor may wish to set up a trust fund which makes annual gift payments to the Foundation for a designated number of years. Then, at the end of the period of time designated, the assets used to fund the gift can be returned to the donor or his heirs, if so designated.

Using the charitable lead trust can pass along wealth to family members either partially or entirely free of estate and gift taxes. And the donor receives an upfront tax deduction.

Charitable Remainder Trust - A gift that pays you life income

Another trust instrument is the charitable remainder trust – it's the reverse of a Charitable Lead Trust discussed above. It allows the donor to

make a tax-deductible gift to the Foundation while guaranteeing an income stream back to the donor. Creating such a trust saves estate taxes, probate costs, and substantial income taxes.

How it works: The donor would transfer assets into a trust to be held and invested by a trustee. Income is paid to the donor or a designated beneficiary for as long as desired, with the remainder going to the Right to Work Foundation. The donor can immediately receive a charitable deduction for the value of the projected charitable remainder interest.

A Charitable Remainder Trust may pay out either a fixed amount or a fixed percentage of the net value of the trust assets each year (in which case the beneficiary's income increases or decreases depending on the investment performance of the trust). After the time allotted in the trust, the remainder of the donor's gift is used by the Foundation to continue the fight against compulsory unionism.

There are many estate planning vehicles that may be appropriate, depending on the donor's situation.

Foundation Action

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Court Blocks Union ‘Maintenance of Membership’ Policy

Widely-abused union policy holds employees hostage for years at a time

HARRISBURG, PA – In an encouraging breakthrough in the Foundation’s strategic litigation program, a federal judge has enjoined a Teamsters union local, the Pennsylvania Turnpike Commission and two Turnpike Commission officers from unlawfully trapping Pennsylvania Turnpike employees in the union and continuing to seize union dues from their paychecks.

Teamsters Local 77 union officials unlawfully prevented employees from resigning their formal union memberships in 2005. In response, the Turnpike employees brought suit to vindicate their constitutional rights. Foundation attorneys also helped Turnpike employees from the Pittsburgh area file a second lawsuit challenging another Teamsters local’s failure to comply with the Foundation-won *Chicago Teachers Union v. Hudson* U.S. Supreme Court decision.

The precedent-setting suit challenges the constitutionality of the so-called “maintenance of membership” clause in the collective bargaining agreement. The clause prohibits employees from resigning their formal union membership except during a narrow 15-day window prior to the expiration of a three-year contract.

So-called “maintenance of membership” clauses are common in the public sector in Pennsylvania and exist in



Associated Press

A federal court slammed a Pennsylvania local of Jimmy Hoffa’s Teamsters union for holding employees hostage in formal union membership.

several other states across the nation. Union officials commonly use such clauses to trap workers in union ranks and thwart efforts to reclaim forced union dues.

Dues seizures pose ‘immediate danger’ to employees’ First Amendment rights

U.S. District Court Judge Christopher C. Connor ordered the preliminary injunction on the basis that the “maintenance of membership” clause likely violates the First Amendment.

The federal judge noted that under the unlawful policy, “the only way plaintiffs can resign from the union is to leave their employment,” and employees who are subject to union discipline must pay full union dues despite their “disagreement with the union’s ideology or politics.”

Further, the judge found that the policy “may have a direct and deleterious impact on plaintiffs’ rights under the First Amendment.”

But just as importantly, the judge explained that the unlawful dues seizures represented a “real or immediate danger to their First Amendment rights.”

“Union officials want to keep Pennsylvania’s public employees from

exercising what limited rights they possess to cut off payment of compulsory dues,” said Mark Mix, president of the National Right to Work Foundation. “These all-too-common ‘maintenance of membership’ clauses allow union officials to block employees from exercising their constitutional rights.”

Foundation posts \$5,000 cash bond to vindicate employees’ rights

Judge Connor ordered the Pennsylvania Turnpike Commission and Teamster union officials to stop deducting forced dues from the employees’ paychecks or disciplining them under the union contract.

Unfortunately, however, the court’s preliminary injunction would not go into effect until the workers posted a \$5,000 cash bond with the Clerk of the Court.

The Foundation itself paid the bond, but Mark Mix noted that it is “unusual and disturbing that a court would ask a tiny group of workers to pony up a large amount of cash as a precondition to protecting their constitutional rights.”

Foundation drives change on both ends of the Turnpike

As Foundation attorneys press for a permanent injunction in the Harrisburg

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Goodyear Employee Fights Union Intimidation

Union officials retaliate against workers who refuse to walk off the job

AKRON, OH – After months of threats, illegal retaliatory strike fines, and even hate mail, the National Labor Relations Board (NLRB) finally agreed to prosecute the United Steel Workers of America (USWA) Local 2L union.

Frank C. Steen III, a tire builder at the Akron Goodyear facility, filed charges with help from attorneys at the National Right to Work Foundation against the USWA union in January. After months of investigation, the NLRB had little choice but to issue a complaint against the USWA union for “interfering with, restraining, and coercing employees.”

In October 2006, USWA union Local 2L officials ordered employees to walk off the job at the Goodyear plant. Union bosses issued their directive as part of a nationwide strike of over 15,000 employees across 16 Goodyear plants in North America which lasted for several months.

However, when Steen and several of his coworkers asserted their right to continue working, union officials targeted them for retaliation.



Citizen.org

A local affiliate of Leo Gerard's United Steelworkers union illegally fined Frank Steen and his coworkers hundreds of dollars for continuing to do their jobs during a union-ordered strike.

Union officials blare bullhorn outside worker's home

During the three month-long strike, Steen resigned his formal union membership and decided to do his job so that he could provide for his family. Yet, after he handed over his union membership resignation to union officials, Steen encountered a barrage of union intimidation tactics.

In one instance, Steen recalls union operatives shouted outside his home with bullhorns, calling him a “low life” for refusing to abandon his job.

But most alarming is the nearly dozen pieces of hate mail he received from an unknown union agent. In fact, the harassment is accessible on public internet forums, where at least one union-strike supporter scorned, “Steen has proven that he is a true scumbag.” (Many other harassing messages were too profane to be repeated in these pages.)

In addition, union officials harassed Steen's coworkers who had also refused to walk off the job. One Goodyear employee received an anonymous threatening telephone call and was told that if he crossed the picket line, he would be fined for everything he made and then some. The union militant went on to say that once the strike was over, the employee would be fired.

“This case shows the contempt that union officials have for employees who

exercise independent judgment and work to support their families during an unpopular strike,” said Raymond LaJeunesse, vice president and legal director of the National Right to Work Foundation.

Union ‘kangaroo court’ hits workers with fines

At the end of the 86-day strike in January 2007, USWA union officials ordered Steen to attend an internal union “kangaroo court” proceeding.

Even though Steen refused to attend the union's trial, union officials imposed a confiscatory fine on him and each of his coworkers for continuing to do their jobs.

In the USWA union's trial board “decision,” Steen was charged with attempting to elicit withdrawals from the USWA union and for allegedly informing others of their legal right to refrain from formal union membership.

Meanwhile, union officials continued to deduct full union membership dues from Steen and several of his coworkers even though they had not been union members since November 2006.

Union boss says it's business as usual

Despite the NLRB Regional Director's plans to prosecute the USWA union's unlawful actions at an August hearing, union bosses have brazenly defended their hostility to dissenting workers.

“We feel we were within our rights to do what we did,” Jack Hefner, a top union official from USWA Local 2L blustered to a local news outlet.

The hearing will be held before an Administrative Law Judge at the NLRB office in Cleveland. ↗

Newsclips Requested

The Foundation asks supporters to keep their scissors sharp for clipping news items exposing the role union officials play in disruptive strikes, outrageous lobbying, and political campaigning.

Please clip any such stories that appear in your local paper and mail them to:

NRTWLDF

Attention: Newsclip Appeal

8001 Braddock Road

Springfield, VA 22160

Ex-Catholic University Employee Wins Back Pay

Union officials settle to avoid federal labor board prosecution

WASHINGTON, DC – Former Catholic University groundskeeper Jerry C. Evans has forced local union officials to refund him six months' worth of back pay after they unlawfully caused his firing for refusal to pay union dues.

Evans prompted the National Labor Relations Board (NLRB) to schedule a hearing to prosecute the union by filing unfair labor practice charges with help from the National Right to Work Foundation.

Responding to the federal charges, NLRB officials realized they had no choice but to issue a complaint against the International Union of Operating Engineers (IUOE) Local 99 for getting Evans fired for daring to withhold dues and fees. However, IUOE union officials opted to settle before the July hearing in order to avoid prosecution.

Union officials thumb noses at employee rights

In early November 2006, union officials demanded Evans pay a \$100 "initiation fee" and fork over \$259 in forced dues. But when he refused, union officials sent a letter to Catholic University demanding that Evans be terminated.

"When they told me I had to pay dues within 10 days, I felt discriminated against," Jerry Evans recounted to *Foundation Action*. "I had no intention to join nor did I ever want to join, and I had worked there for over a year."

Under the Foundation-won *Communications Workers of America v. Beck* case, employees are entitled to refrain from formal union membership, but can still be forced to pay for costs related to collective bargaining.

But IUOE union officials sent the letter to Catholic insisting that Evans be fired only days after they demanded he pay



Union officials backtracked and asked Catholic University to rehire former employee Jerry C. Evans, pictured on campus, when the Foundation helped contest his unlawful firing.

the unlawful full forced dues, despite having never informed Evans of his rights under *Beck*.

"It is despicable for union officials to threaten the livelihood of employees who refuse to toe the union line," said Stefan Gleason, vice president of the National Right to Work Foundation.

Union officials scramble to cover their mistake

But in early May, when the NLRB announced it could not disagree with Evans' charges, union officials quickly backtracked and sent a letter to Catholic asking that Evans be rehired.

In a last ditch attempt to cover their unlawful actions, union officials were likely trying to limit the amount of back wages they would be liable for due to the illegal firing.

"I wanted [the union] to simply acknowledge they were wrong, to apologize to me, and to clear my good name," explained Evans. "I know that I am blessed. And I don't let anything hold me down."

Catholic teachings supportive of the Right to Work

That Catholic University officials' heeded union directives to fire Evans also runs counter to the Catholic Church's teachings on social justice in the workplace, which provide strong support for the Right to Work principle.

According to Pope John Paul II in his 1981 *Laborem Exercens* ecumenical teaching, "Union demands cannot be turned into a kind of group or class 'egoism.'"

This contemporary teaching reflects Pope Leo XIII's *Rerum Novarum* social teaching 90 years earlier. Pope Leo explained, "Workers are largely under the control of secret leaders and these secret leaders apply principles which are in harmony with neither Christianity nor the welfare of the States...they contrive that those who refuse to join with them will be forced by want to pay the penalty."

To find out more about Catholic Social Teaching and the Right to Work, click on the "About Your Legal Rights" section of the Foundation's website at www.nrtw.org/a/Catholic.pdf. 

Foundation-Aided Employees Featured on Right to Work Website

Courageous employees detail fights against compulsory unionism

SPRINGFIELD, VA – For nearly 40 years, the National Right to Work Legal Defense Foundation has provided free legal aid to hundreds of thousands of employees nationwide whose human and civil rights have been violated by compulsory unionism abuses.

In order to read about the personal stories of just a few of these employees, supporters can now view a new feature on the website entitled “Employee Profiles.” The new page offers a brief synopsis of each employee’s courageous stand, including a slideshow of pictures, video, news clips, and personal quotes about each case.

The National Right to Work Foundation's new website feature "Employee Profiles" provides an interactive look at Foundation-aided employees who have stood up for their rights.

Foundation Action readers are encouraged to click on www.nrtw.org/profiles/ to read the stories of these brave individuals who, with the Foundation's help, have boldly stood up to defend their rights in the face of union coercion. 

Spotlight on...

Matthew Muggeridge,
Staff Attorney



Matthew C. Muggeridge is the most recent addition to the National Right to Work Foundation's expert legal team. Not only does he help individual workers who are victims of top-down organizing abuse, but Muggeridge also assists non-English speaking workers who seek free legal aid.

A Canadian native, Muggeridge brings a wealth of international experience to the Foundation's legal aid program. He spent three years living abroad in Spain and Italy, where he mastered several foreign languages including Spanish, Italian, and French.

Before moving to the United States for the first time, Muggeridge was the Senior Associate Lobbyist for High Park Advocacy Group in Toronto, Canada. He also taught philosophy and foreign languages for one year at Dulwich College in London, England.

Between 2004 and 2005, Muggeridge worked as a legal intern for Dugan,

McKissick, Wood, & Longmore in Maryland, and for the Federalist Society in Washington, DC. With a growing interest in labor law and a desire to help victims of compulsory unionism, Muggeridge naturally found his niche at the Foundation.

A member of the Federalist Society, Muggeridge was admitted to the Maryland Bar in 2006. He received his J.D. from Ave Maria School of Law at Ann Arbor, Michigan in 2006, where he was a Researcher for two years. Muggeridge earned his Post Graduate Degree in Education from King's College London in 1999 and graduated summa cum laude from Gregorian University in Rome in 1994, with a bachelor's degree in philosophy.

Currently, Muggeridge resides in Virginia with his wife and three children and aims to become a United States citizen this year.

Davenport is Foundation's 8th Supreme Court Victory

continued from cover

Consequently, even though Davenport and over 4,000 other teachers were not formal union members, union officials still forced them to pay dues amounting to \$500 or more each per year.

In March 2006, the Washington State Supreme Court struck down the state's 1992 "paycheck protection" regulation which required unions to get affirmative consent from nonunion employees before spending roughly \$10 in forced dues.

With its ruling, the Washington State high court had opened the door for union legal attacks on the nation's 22 state Right to Work laws.

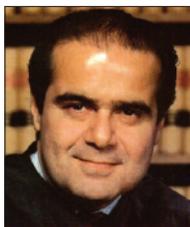
Bush administration supports union position

On January 10, 2007, oral arguments took place at the U.S. Supreme Court. In their briefs, Foundation attorneys gave the High Court the opportunity to reexamine whether union officials could automatically deduct compulsory dues for politics or other non-bargaining activity from non-members' paychecks in the first place.

Foundation attorneys asked the High Court to clarify that a phrase from the 1961 precedent *Machinists v. Street* stating that "dissent is not to be presumed" does not apply to people who have already voiced dissent by either refusing to join or quitting the union.

For decades, union officials have exploited this statement and used it to hamstring workers by making them annually object. In short, Foundation attorneys asked the High Court to rule that when employees decline to join or resign from a union, it should be presumed that they do not support the union's politics.

This clarification of the 45-year-old ruling would have meant that at least a million American workers who are not union members but who are forced to pay dues would be entitled to an



In writing the opinion of the court, Justice Antonin Scalia noted, "it is undeniably unusual for a government agency to give a private entity the power, in essence, to tax government employees."

automatic reduction in their forced union dues.

However, in their ruling in *Davenport*, Scalia and the other Justices, as the Court so often does, chose to rule as narrowly as possible and thus did not address that issue. Disturbingly, U.S. Solicitor General Paul Clement, an appointee of President Bush, supported the union's position, and pointedly used the oral argument time he had obtained to steer the Justices away from ruling in the employees' favor on this critical question.

When the High Court released its *Davenport* opinion without ruling on this fundamental question, National Education Association (NEA) union lawyers rejoiced in the media.

"The court could have hurt us, and chose not to, and reaffirmed what we have been doing for 25 years," said Robert H. Chanin, a high-ranking NEA union official who was pleased with the High Court's decision. Chanin went on to remark, "It is rare that I can honestly say we are pleased with a unanimous Supreme Court decision reversing our win in the court below, but this is one of those occasions."

'Paycheck protection' regulation a blind alley

"Of course, union officials considered it a victory even though the state law was upheld," said Mix. "The fact is, this 'paycheck protection' approach has proven to be a blind alley that has failed to ameliorate the ills of compulsory

unionism in Washington State over the past 15 years." (See an independent study with more details on the Foundation web page at: http://www.nrtw.org/b/nr_647.php)

In writing for the *Detroit News* and *Washington Times*, Brad Smith, a highly respected former Chairman of the Federal Election Commission and chairman of the Center for Competitive Politics, warned activists not to copy Washington State's flawed law.

"While correcting the lower court's twisting of the First Amendment, the U.S. Supreme Court had no choice but to uphold a state campaign finance provision misleadingly called 'paycheck protection,'" Smith wrote.

However, because "paycheck protection" is narrowly defined under campaign finance laws, such regulation has very limited reach and scope.

Smith explained, "For starters, they only cover express advocacy of a candidate's election or defeat - which is a fraction of union political expenditures. Moreover, state campaign finance laws do not apply to federal election activity."

Furthermore, after the Washington law was initially enacted, WEA union officials adapted to it and collected and spent even more political money than ever.

"By changing accounting practices and slightly modifying the nature of their spending, the union collected and spent 60 percent more money on politics, more broadly defined, the year after the law went into effect. Of course, the law left intact the union's core privilege of forced union dues, so nothing stopped union officials from jacking up the dues even higher," Smith noted.

"The real solution is to end, not regulate, compulsory unionism. Only the elimination of unions' 'extraordinary benefit' (as Justice Scalia called it) to force workers to pay union dues or be fired will protect employee free speech," concluded Smith. 

Trapped in Union

continued from page 3

case, they continue to assist other Turnpike employees in the related Pittsburgh case.

In the Pittsburgh suit naming Teamsters union Local 250, the resignations of Turnpike employees from formal union membership were honored, but the union hierarchy continues to confiscate over 92 percent of full union dues from their paychecks.

However, in the Foundation-won *Hudson* case, the U.S. Supreme Court ruled that, before collecting any dues, union officials must provide an audited disclosure of the union's expenses and give employees an opportunity to object to paying forced union dues spent for activities unrelated to collective bargaining. Local 250 has not fully complied with *Hudson*.

"These two cases demonstrate the abuse that will inevitably continue until employees in the Keystone State are protected by a Right to Work law, making union dues payment strictly voluntary," concluded Mix. ¹

Free Newsletter

If you know others
who would appreciate
receiving
Foundation Action,
please provide us with
their names and addresses.
We'll rush them the next
issue within weeks.



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Since the last time I wrote to you, your Foundation has won another case at the U.S. Supreme Court. On June 14, the High Court ruled 9-0 to overturn a dangerous Washington State Supreme Court decision that created out of thin air a "constitutional right" for union officials to seize nonunion employees' forced dues to play politics.

As you can read in the cover story of this issue of *Foundation Action*, overturning that Washington State ruling was vital for the cause of employee free choice. Failure to overturn this activist decision would have put Right to Work laws squarely in the crosshairs of union lawyers.

Unfortunately, however, the news from the High Court's chambers isn't all good.

The Justices sidestepped an opportunity created by Foundation attorneys representing 4,000 nonmember teachers in the case. Foundation attorneys had asked the Court to clear up confusing language from a 1961 decision that union bosses have exploited to great effect ever since.

Still, despite this missed opportunity described in detail in the article, *Davenport* was an important victory for your Foundation that headed off severe damage to the First Amendment by the Washington Supreme Court in response to a misguided campaign finance law.

I'm deeply grateful for your continued support. Without it, we would not be able to defend employee free choice in cases all around the country, from the local level all the way to the highest court in the land.

Sincerely,

Mark Mix