



Foundation Action

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

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West Virginia Supreme Court to Hear Right to Work Case

Foundation continues to defend all Right to Work laws against Big Labor attack

CHARLESTON, WV – The West Virginia Supreme Court will hear arguments on January 15 in union bosses’ long-running case seeking to dismantle West Virginia’s Right to Work Law and restore their forced-dues powers over workers across the Mountain State.

National Right to Work Foundation staff attorneys have already filed multiple legal briefs in this case for West Virginia workers in defense of West Virginia’s Right to Work Law.

After Passage, Union Bosses Immediately Target West Virginia Right to Work Law

Last year, union lawyers relied on discredited legal arguments to convince Kanawha County Circuit Court Judge Jennifer Bailey to declare West Virginia’s entire Right to Work Law invalid. Union lawyers dubiously claim that West Virginia union bosses have a “right” to forced dues.

Judge Bailey issued a similar ruling blocking the Right to Work law after the legislation was signed into law in 2016. The West Virginia Supreme Court overturned that decision, citing arguments made in briefs by Foundation staff attorneys.

“Of course, union partisans never willingly accept the loss of forced dues,” said National Right to Work Foundation President Mark Mix. “So now the issue is back at the state’s highest court.”

If Big Labor’s lawsuit to overturn



Forced-dues-hungry union bosses have been waging a legal battle to overturn West Virginia’s Right to Work Law since it was enacted in 2016. Foundation staff attorneys have been fighting back by filing amicus briefs in court.

West Virginia’s Right to Work Law succeeds, union bosses could have thousands of independent-minded workers across the state fired solely for refusing to subsidize union activities.

forced-dues power,” Mix said.

“Big Labor is waging this protracted legal battle to return the Mountain State to a time when millions and millions of dollars

See ‘Foundation Defends’ page 6

Foundation Files 10 Briefs to Protect Rights of West Virginia Workers

Foundation staff attorneys have filed 10 legal briefs in the multi-year case. The Foundation’s latest amicus brief was filed for West Virginia nursing home employee Donna Harper. Harper, like many other workers in West Virginia, chose not to pay dues or fees to union bosses, which is her legal right in a Right to Work state.

“Union bosses in West Virginia are intent on reclaiming their

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Electrician Files Discrimination Lawsuit Challenging Forced Union Fees

Boston College and SEIU officials ignored reasonable request to accommodate religious beliefs

BOSTON, MA – In November, National Right to Work Foundation staff attorneys filed a federal Title VII religious discrimination lawsuit for a Boston College electrician whose rights were violated by the Service Employees International Union (SEIU) in illegally demanding union fees. The lawsuit also names his employer, Boston College, for its role in the discrimination.

Ardeshir Ansari objects to supporting the union based on deeply held religious beliefs. Under the local SEIU's monopoly bargaining agreement at Boston College, however, he was told that he must join or financially support the SEIU or be fired. To avoid being fired, Ansari unwillingly paid fees to the union in violation of his sincere religious beliefs.

On October 1, 2018, Ansari sent a letter to Boston College and the SEIU, informing them his religious beliefs conflict with joining or financially supporting the union. He asked that his union fees be diverted to charity instead of being sent to the union, an established remedy for such a conflict.

Instead of responding, the college continued to take a cut of



Boston College officials seized union fees from electrician Ardeshir Ansari's paycheck at the behest of SEIU bosses, even after he had informed them that such fees violate his religious beliefs.

his paycheck and send it to SEIU officials in violation of his sincerely held religious beliefs.

In response, Ansari filed charges with the Equal Employment Opportunity Commission (EEOC) against college and union officials. The EEOC then determined that both Boston College and the SEIU had violated Title VII.

Last September, the EEOC gave Ansari a right-to-sue letter, which

authorized him to file a lawsuit under Title VII of the Civil Rights Act of 1964. That federal law prohibits employers and unions from discriminating against an individual based on his or her religious beliefs.

In November, Foundation staff attorneys filed a lawsuit for Ansari against Boston College and the SEIU for illegally discriminating against him by failing to reasonably accommodate his religious beliefs, violating his rights under Title VII.

The lawsuit demands that college and SEIU local officials pay all fees deducted from Ansari's paycheck to a charity mutually agreed upon and seeks damages for the emotional distress he suffered while his rights were violated for more than a year.

EEOC Found Religious Discrimination by SEIU

Moreover, the Title VII lawsuit asks the court to prevent the college from continuing to discriminate against his religious beliefs and that the union be required to inform workers that those with religious objections to the payment of union fees are entitled by law to pay those fees to a charity instead.

"Workers with sincere religious objections to joining or funding a union are legally protected from being forced to violate their conscience," said National Right to Work Foundation Vice President and Legal Director Ray LaJeunesse. "No one should ever be forced to choose between keeping a job to provide for their family and violating their deeply held religious beliefs by supporting a union."

"Right to Work laws protect workers like Mr. Ansari from this kind of discrimination. Under those laws, workers can stop paying union fees and resign union membership for any reason and thus avoid illegal religious discrimination," added LaJeunesse. ☩

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.

Sacramento Employee Hits Union with Charge for Ignoring *Janus* Rights

More than a year after Court decision, union bosses still tell workers forced fees are legal

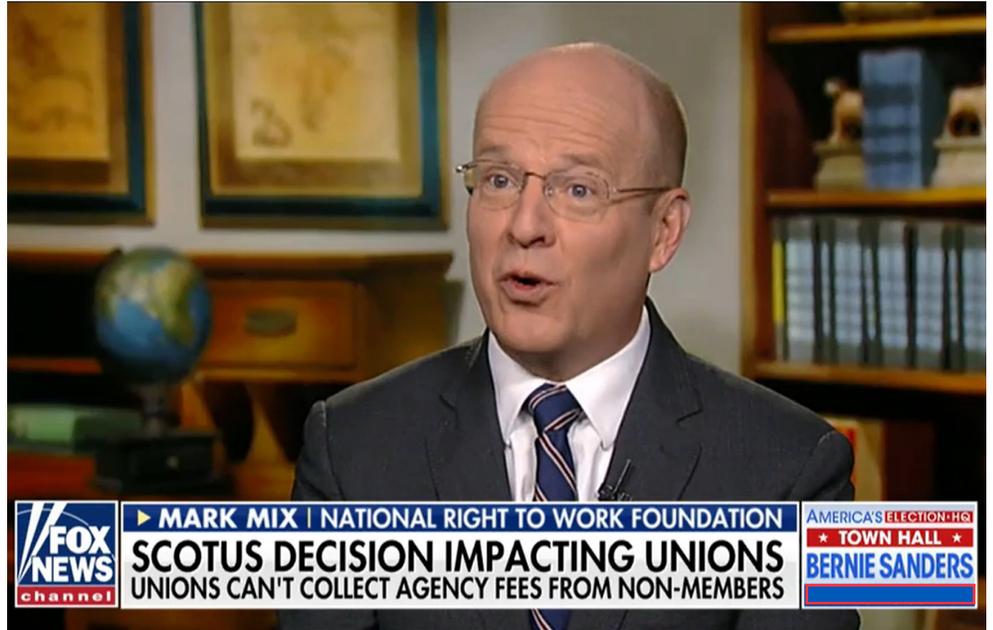
SACRAMENTO, CA – Ethan Morris works for Sacramento County as a wastewater treatment employee. With free legal aid from the National Right to Work Legal Defense Foundation, he has hit the International Union of Operating Engineers (IUOE) Stationary Engineers union bosses at his workplace with charges that their misstatements of his requirement to pay union fees breach California law by disregarding workers' First Amendment rights under the Foundation-won *Janus v. AFSCME* Supreme Court decision.

California's Public Employment Relations Board (PERB), the agency in charge of determining whether unions like IUOE have violated California's public sector labor laws, will now investigate Morris' charge.

California Union Bosses Blatantly Lie About Legality of Forced Dues

Morris has never been a member of IUOE Stationary Engineers. He recounts in his charge that he received a notice from an IUOE financial secretary in July 2019 which claimed that "employees who do not join the Union must pay a . . . fee" to the union as a condition of employment, and that these mandatory fees are "legal and enforceable in California" through direct deductions from non-member employees' paychecks.

Morris' charge says the union's fee demands ignore government employees' First Amendment rights under the 2018 Foundation-won *Janus v. AFSCME* Supreme Court decision. In *Janus*, a majority of the Court recognized that union dues or fees cannot be mandatory for public employees and may only be deducted from government workers' paychecks if they have given "affirmative and knowing" waivers of their First Amendment



In the Foundation-won Janus v. AFSCME decision, the Supreme Court recognized the right of all American public sector workers to refrain from subsidizing unions, but California IUOE bosses are acting as if those rights don't exist.

right not to subsidize a union.

Morris maintains that by ignoring *Janus*, IUOE Stationary Engineers bosses infringed his rights under California's Meyers-Milias-Brown Act (MMBA). That statute provides Golden State workers "the right to refuse to join or participate in the activities of employee organizations" and prohibits unions from "coerc[ing] or discriminat[ing] against" employees for exercising that right.

IUOE Officials Broke California Labor Law by Defying *Janus*

Morris demands that union officials rectify the situation by stopping the illegal fee demands and posting a PERB-approved notice informing his coworkers of their right to refrain from union activities and acknowledging that compulsory fee demands violate that right.

"Ethan Morris discovered his First Amendment *Janus* rights independently, and in doing so

was able to catch IUOE Stationary Engineers bosses in a red-handed lie about the right of public sector workers in America to abstain from financially supporting a union," observed National Right to Work Foundation President Mark Mix. "For every worker who rebuffs illegal union threats, there are almost certainly thousands of workers who unknowingly sign away their rights.

"State governments must step up and proactively protect employees' *Janus* rights, including making sure that every worker knows those rights and not deducting any union dues or fees absent a worker's knowing and voluntary waiver of his or her rights," Mix added.

Taking the lead on protecting public workers' *Janus* rights is Alaska, where last September Gov. Mike Dunleavy issued an executive order requiring all state agencies to stop the deduction of union dues from any worker who had not submitted a form affirmatively waiving his or her right under *Janus* not to fund any union activities. ☞

Paramedic Files Appeal after NLRB Disregards Illegal Union Retaliation

Appeal to NLRB General Counsel comes just months after Region 14 was reversed in similar case

ST. LOUIS, MO – Jarod Aubuchon, a St. Louis-area paramedic who charged Teamsters Local 610 union officials with illegal retaliation after he tried to inform his coworkers of their right to pay reduced union dues, is filing an appeal in his case to the National Labor Relations Board (NLRB) General Counsel in Washington, D.C. He is represented free of charge by National Right to Work Legal Defense Foundation staff attorneys.

Aubuchon's appeal comes after the October 2019 dismissal of his case by NLRB Region 14 officials in St. Louis. Region 14 was reversed by the NLRB General Counsel in a similar union retaliation case this summer, which was also brought by Foundation staff attorneys.

Union Officials Vow Punishments after Worker Posted Rights Notices

Aubuchon discovered the right of private sector workers under the Foundation-won *CWA v. Beck* Supreme Court decision to resign union membership and pay a reduced portion of union dues. Because Missouri is not a Right to Work state, private sector workers can still be compelled to pay part of union dues as a condition of employment.

Beck, won by Foundation staff attorneys in 1988, guarantees that employees who are not union members can only be required to pay fees to a union for expenses that are directly germane to bargaining, such as contract administration.

Armed with this new knowledge, Aubuchon posted flyers in common areas of his workplace informing his coworkers of their *Beck* rights. According to his charge, Teamsters agents responded by tearing down these notices and later demanding that his employer, Medic One, discipline him for the postings. Actions by union officials that cause



Paramedic Jarod Aubuchon is appealing his case against Teamsters officials after they punished him for informing his coworkers of their rights to resign union membership and pay reduced dues.

an employer to discriminate against workers on such grounds are prohibited by the National Labor Relations Act (NLRA).

Aubuchon resigned his own union membership and asserted his *Beck* rights. Aubuchon's charge states that neither his resignation nor his *Beck* rights have been acknowledged by Teamsters bosses, and full dues are still being seized from his paychecks.

Employee Appeals to NLRB General Counsel with Free Foundation Legal Aid

After NLRB Region 14 officials rejected his case, Aubuchon petitioned the NLRB General Counsel to overturn the decision and order remedies for the retaliation he experienced from Teamsters officials.

"They spend union money on political activism without consideration of its members," Aubuchon said of Teamsters

officials to the *St. Louis Record* after his appeal was filed. "We have a right to not have our money used in that manner and in the end I hope employees are better educated on their rights and how to exercise them."

In July 2019, the General Counsel reversed Region 14 officials' dismissal of a similar case brought by Foundation staff attorneys for Kansas City-area hospital worker Kacy Warner.

Warner charged officials of the National Nurses Organizing Committee (NNOC) union with illegally interfering with a petition she was circulating for a vote to remove the union. That included tearing down flyers she had hung in bathrooms and other common areas in her workplace informing employees of the petition. In her case the NLRB General Counsel reversed Region 14's dismissal and ordered region officials to prosecute the charge.

Region 14 officials were also overturned by the full Labor Board in October 2019 after the Region dismissed a petition for a vote to remove the union from St. Elmo, Illinois-based ConAgra Foods worker Robert Gentry's workplace. United Food and Commercial Workers (UFCW) union bosses had attempted multiple times to stop workers at the plant from exercising the right to vote out the union.

"The NLRB is charged with enforcing workers' rights under the National Labor Relations Act, yet there is a disturbing pattern of Region 14 failing to enforce the rights of rank-and-file workers when doing so advances the interests of union bosses," commented National Right to Work Foundation Vice President Patrick Semmens. "It should not take an appeal to Washington, D.C., for workers to have their rights fully protected against union boss abuses." ✚

Foundation Victories Stop Illegal Forced Union Dues for Public Employees

Settlements end Big Labor restrictions on workers exercising Janus rights in New Mexico, Ohio

CINCINNATI, OH – National Right to Work Legal Defense Foundation staff attorneys continue to win settlements for workers who have been trapped by arbitrary union-created “escape periods” or “window periods,” which violate workers’ rights by preventing them from stopping dues deductions.

In the 2018 Foundation-won *Janus v. AFSCME* decision, the U.S. Supreme Court held that requiring public sector employees to pay union bosses is unconstitutional. Yet, union bosses continue to tell workers they can only stop dues deductions during limited periods. After Foundation-backed lawsuits, however, they often choose to settle with workers rather than face Foundation staff attorneys in court.

In November, Ohio bus driver Donna Fizer won a settlement against Ohio Association of Public School Employees (OAPSE). With Foundation legal aid, Fizer sued OAPSE for continuing to take money from her paycheck after she resigned her union membership, which violates the *Janus* ruling’s protection of her First Amendment rights.

Workers Win Battles Coast to Coast Stopping Unconstitutional Dues

Fizer’s victory came when Foundation staff attorneys filed a federal lawsuit for her, contending the dues seizures OAPSE made from her paycheck after she resigned her union membership infringed her rights under *Janus*.

OAPSE bosses had told Fizer that she couldn’t leave the union except during a union-created “escape period” and continued to take a portion of her paycheck. As a result of the settlement, union bosses refunded her the money they seized under the illegal policy.

After the 2018 *Janus* ruling, Fizer notified school board officials she



Shopping for a refund: Ohio school bus driver Donna Fizer won a refund of illegally seized dues after fighting schemes meant to block public employees from exercising their rights under the Foundation-won *Janus* decision.

was “immediately withdrawing [her union] membership” and exercising her First Amendment *Janus* right to cut off union dues deductions.

The school district treasurer quickly complied and stopped the deductions from her paycheck, but OAPSE bosses responded by filing a grievance which alleged that Fizer could not revoke except within a tiny, union-created “escape period” that occurs only 10 days every few years. They demanded that the school district continue to illegally take money from Fizer.

Faced with a federal lawsuit union officials quickly settled the case, vindicating her rights. As part of the settlement, OAPSE bosses returned to Fizer all the dues they took from her paycheck since the date of her membership revocation, and further notified the district to cease any further deduction of union dues from her paycheck.

In October, Foundation attorneys won a settlement for New Mexico information technology worker David McCutcheon and 67 of his coworkers, who collectively received over \$15,000 in refunds

of dues seized by Communications Workers of America (CWA) bosses in violation of their *Janus* rights.

Foundation Wins Class Action *Janus* Lawsuit in New Mexico

McCutcheon works as an IT technician at New Mexico’s Department of Information Technology and was forced to pay union dues as a member before the 2018 *Janus* decision. After the Foundation-won victory, McCutcheon attempted to end the dues payments only to be told he could only do so during a brief two-week period in December, a violation of his rights under *Janus*.

Again, instead of fighting the lawsuit in court, CWA officials opted to settle the case. As part of the settlement agreement, CWA officials removed the union-created “escape period.” The union also paid back fully, plus interest, all dues taken from McCutcheon and others who had attempted to exercise their First Amendment rights under

See ‘Workers Enforce’ page 8

Rehearing in Continuation of Landmark *Janus* Case

Union bosses refuse to return dues seized in violation of First Amendment



A favorable decision for Mark Janus at the Seventh Circuit could be the next step toward public employees getting back millions of dollars that were seized from them by union bosses in violation of their First Amendment rights.

WASHINGTON, D.C. – Mark Janus won a landmark victory for American workers in 2018 when the Supreme Court acknowledged in *Janus v. American Federation of State, County, and Municipal Employees (AFSCME) Council 31* that requiring public sector workers to pay union fees as a condition of employment infringed their First Amendment rights.

However, the coffers of the AFSCME union bosses who once had monopoly bargaining power over Janus -- and the coffers of countless other unions around the country -- are still flush with dues money that

was seized from employees without their “affirmative and knowing” consent as the decision requires.

National Right to Work Foundation staff attorneys who represent Janus, along with attorneys from the Illinois-based Liberty Justice Center, have filed a petition to the Seventh Circuit Court of Appeals for a rehearing *en banc* in the continuation of his case. Janus seeks a ruling that will make AFSCME union officials return thousands of dollars in dues that were taken from his paycheck in violation of *Janus* since March 23, 2013. If the rehearing is granted,

Janus’ case will be heard before 12 judges of the Seventh Circuit.

A three-judge panel of the Seventh Circuit refused to remedy AFSCME bosses’ unconstitutional conduct last November despite the High Court’s noting in *Janus* that union officials have been “on notice” for years that mandatory fees likely would not comply with the heightened level of First Amendment scrutiny articulated in the 2012 *Knox v. SEIU* Supreme Court decision, also won by Foundation staff attorneys.

“Mark Janus is simply asking the Seventh Circuit to remedy the years of unconstitutional conduct AFSCME bosses have perpetrated at his and other public sector workers’ expense,” observed National Right to Work Foundation Vice President Patrick Semmens.

At stake for Mark Janus is over \$3,000 of his money that was seized by union officials in violation of his First Amendment rights. But a ruling in his favor could have a nationwide impact, setting a federal precedent that would be cited in dozens of other cases seeking refunds of dues taken unlawfully by public sector union bosses. Foundation staff attorneys are currently litigating more than 30 *Janus*-related cases that collectively seek more than \$120 million in refunds. †

Foundation Defends WV Right to Work Law at State Supreme Court

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in workers’ money were seized by union bosses to fill Big Labor’s coffers with forced dues.”

This case is the latest legal battle in the Foundation’s long history of effectively defending Right to Work laws in state and federal court from spurious attacks by Big Labor. Although federal law specifically authorizes states to pass Right to Work laws to protect workers from union boss coercion, union lawyers

have repeatedly challenged these laws in an attempt to keep siphoning union dues and fees from workers’ paychecks.

Foundation Has Successfully Defended State Right to Work Laws Nationwide

In addition to West Virginia, Foundation staff attorneys have successfully pursued legal action in

recent years to defend and enforce new Right to Work laws in Indiana, Michigan, Wisconsin and Kentucky, all of which have passed Right to Work protections for employees in just the last seven years. In Michigan alone, Foundation staff attorneys have assisted employees in over 100 cases since Right to Work went into effect in early 2013. †

Make A Planned Gift to the National Right to Work Foundation Today!



It's not too early to consider making a planned gift to the National Right to Work Legal Defense Foundation for 2020! Your gift would give vital support to the Foundation's Strategic Litigation Program challenging Big Labor's coercive powers, and at the same time provide tax benefits to you as a donor.

Although cash gifts continue to be the most popular way to support the Foundation's mission of curbing the abuses of compulsory unionism, many supporters have found gifts of stock or securities can help minimize their tax burden.

In addition to a gift of stock, please consider a tax-free IRA gift today! If you are age 70½ or older, instead of taking a Required Minimum Distribution (RMD) you may instruct your IRA custodian/institution to transfer any amount up to \$100,000 directly to the National Right to Work Foundation (Tax ID# 59-1588825). This IRA distribution would not be included in your taxable income for 2020. While it would not produce an income tax deduction, it would satisfy some or all of your RMD for the year.

Donations to the Foundation are tax deductible in the same manner as donations to a church or university. As in all legal, tax and financial matters, we urge you to consult your tax advisor or estate attorney before making a planned gift.

Now is the time to step up and consider a planned gift to gain tax advantages while advancing the work of the Foundation and its Strategic Litigation Program!

If you have any questions, or need further information, please contact Ginny Smith at gms@nrtw.org, or 1-800-336-3600.



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Workers Enforce *Janus* Rights with Foundation Aid

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Janus but were blocked from doing so because of the “escape period” restrictions.

“Local 7076 and CWA will not enter into any [union contract] with the State of New Mexico that restricts to a yearly window period the time when a bargaining unit member may revoke a previously authorized dues deduction authorization,” the settlement reads.

“Union officials have no legal right to hold workers hostage in forced-dues ranks because of brief, arbitrary union-created window periods,” said National Right to Work Foundation Vice President and Legal Director Ray LaJeunesse. “It’s telling that these union bosses are settling in court rather than continuing to litigate these cases. It shows that the law, because of the *Janus* ruling, favors workers, not the interests of union bosses who want to trap them.”

Since the *Janus* decision in 2018, Foundation attorneys have litigated more than 30 cases seeking to enforce and expand the *Janus* victory, with others being filed all the time. †

**National Right to Work
Legal Defense Foundation**

**Rated “A”
by
Charity Watch**

Source: *Charity Rating Guide
2019-2020 Winter Edition*
American Institute
of Philanthropy



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

As we begin 2020, I am proud to tell you that the National Right to Work Foundation continues to lead the fight to protect workers from the abuses of forced unionism.

You’ll read in this issue of **Foundation Action** about several of the latest cases Foundation staff attorneys are pursuing to win and enforce key legal protections for workers, while defending state Right to Work laws in court from union legal assaults.

This issue features four separate cases to enforce and build upon the landmark Foundation-won *Janus v. AFSCME* Supreme Court decision for workers, for IT employee David McCutcheon, bus driver Donna Fizer, municipal employee Ethan Morris and former Illinois state employee Mark Janus in the continuation of *Janus v. AFSCME*.

In addition, Foundation staff attorneys are providing free legal aid to electrician Ardeshir Ansari after union bosses illegally demanded union fees. Ansari is suing the Service Employees International Union under the Civil Rights Act of 1964 for violating his deeply held religious beliefs.

Meanwhile, Foundation staff attorneys continue to defend West Virginia’s Right to Work Law, which is at issue in the West Virginia Supreme Court after union lawyers launched a spurious attack to force thousands of independent-minded workers across the state to subsidize union activities.

So, as you can tell, the National Right to Work Foundation is hard at work defending the rights of American workers. And we plan to keep fighting throughout 2020 and beyond.

Of course, this is only possible because of the generosity of Right to Work supporters like you. I am thankful for all you give.

Sincerely,

Mark Mix