



Foundation Action

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

Vol. XL, No. 5

8001 Braddock Road • Springfield, Virginia 22160

www.nrtw.org

September/October 2020

Foundation Defends New Rules Protecting Right to Remove Unwanted Unions

AFL-CIO kingpins suing to overturn NLRB rules slashing barriers to decertification votes

WASHINGTON, DC – The National Labor Relations Board’s (NLRB) new rules, designed to safeguard the right of workers to remove an unwanted union hierarchy in their workplace, went into effect on July 31. The policies, which were finalized in April, closely followed comments submitted by National Right to Work Foundation staff attorneys and petitions sent by thousands of Foundation supporters.

The policies specifically curtailed the non-statutory “blocking charge” and “voluntary recognition bar” policies used to trap workers in unions they oppose, and also eliminated a scheme used by union bosses in the construction industry to impose unionization without any evidence of worker support.

Less than a month before the reforms went into effect, union lawyers with the AFL-CIO filed a lawsuit against the NLRB in an attempt to reimpose these coercive restrictions on workers. Foundation attorneys are primed to defend the reforms and counter the wild claims AFL-CIO legal operatives make in the lawsuit.

New Rules Designed to Shield Workers from Unwanted Unions

The new rules are meant to eliminate virtually all union “blocking charges,” which are filed by union bosses to prevent rank-and-file employees from exercising



Over the past few years, the Foundation has provided free legal aid to workers across the country who were blocked by pro-union boss NLRB rules from voting out an unwanted union. Above are just a handful of them.

their right to vote to remove a union.

Under the NLRB’s new policy, union charges cannot indefinitely stall the employees’ vote from taking place, and in most instances the vote will occur without delay. Additionally, as the Foundation advocated in comments, the NLRB modified its original proposed rule so that after employees vote, the ballots will be tallied and the vote announced in most cases instead of being impounded for months or even years while “blocking charges” are resolved.

The NLRB also reversed an Obama-era ruling imposing the so-called “voluntary recognition bar” policy. Under that policy, workers were blocked for up to a year from requesting a secret-ballot election to challenge a union which was installed as their monopoly bargaining agent through an abuse-

prone “Card Check” drive, which bypasses the NLRB-supervised secret-ballot election process. In reversing the Obama NLRB, the current Labor Board reinstated a

See ‘*Foundation-Backed*’ page 8

IN THIS ISSUE

- 2 Chicago Transit Worker Joins Mark Janus at Supreme Court in Demanding Refunds
- 3 Mix to US Attorney: Let Workers Refuse to Fund Scandal-Ridden UAW Bosses
- 4 Push to Remove UFCW Union Could End Pro-Union Boss “Contract Bar” Policy
- 5 Ohio Public Workers Axe Illegal Restrictions on Janus Rights for Almost 30,000
- 7 Oklahoma Sysco Employees Boot Unpopular Teamsters Bosses from Warehouse

Chicago Transit Worker Joins Mark Janus at Supreme Court in Demanding Refunds

Workers from Ohio, Connecticut also primed to ask High Court to weigh in on issue

CHICAGO, IL – With free legal aid from National Right to Work Foundation staff attorneys, Chicago Transit Authority worker Benito Casanova has submitted a petition for writ of certiorari to the U.S. Supreme Court in his class-action lawsuit against the International Association of Machinists (IAM) Local 701 union.

Casanova's case seeks a ruling that will make IAM officials return union fees that they forced Casanova and other workers to pay in violation of their First Amendment rights as recognized in the 2018 Foundation-won *Janus v. AFSCME* Supreme Court decision. In *Janus*, the Court ruled that no public sector worker can be forced to pay union dues or fees as a condition of employment, and that union fees can only be deducted from worker paychecks with their affirmative consent.

Janus lead plaintiff Mark Janus, a former Illinois child support specialist, is also awaiting the Supreme Court's decision on whether to grant a writ of certiorari in the continuation of his case, which seeks a similar refund. Federal courts (including the Seventh Circuit Court of Appeals,



Chicago transit worker Benito Casanova is one of a growing number of workers who, with Foundation aid, are pursuing a Supreme Court ruling that will make union bosses return years of unconstitutional fees.

which ruled against both Janus and Casanova and prompted their petitions to the High Court) have so far allowed union officials to keep forced fees seized against

workers' First Amendment rights as recognized in the *Janus* decision.

The issue was always expected to end up at the High Court, especially with so many cases and so much money on the line. Foundation attorneys represent Casanova, Janus, and other public workers in about 20 cases, seeking the return of an estimated \$130 million or more in unconstitutionally seized dues.

Foundation-Backed Petitions Defending *Janus* Rights Pile Up at High Court

In addition to Casanova's case, two other class-action cases are now at the stage where Foundation staff attorneys can ask the Supreme Court to hear those cases, or, should the court agree to hear *Janus* or *Casanova*, to hold them pending a Supreme Court ruling.

One of the cases concerns Ohio Tax Department Employee Nathaniel Ogle, who seeks the return of millions in forced union fees taken by Ohio AFSCME union bosses from a large class of state employees. In the other case, Connecticut state environmental workers James Grillo and Kiernan Wholean seek the return of potentially millions of forced fees seized by Service Employees International Union (SEIU) bosses from another large class.

"In the 2018 *Janus* decision, the Supreme Court majority recognized that it is 'hard to estimate how many billions of dollars have been taken from non-members and transferred to public sector unions in violation of the Constitution,'" commented National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. "Mr. Casanova and many other public workers throughout the country just want their illegally seized wages to be returned, so it is critical that the Supreme Court take up this issue." 🇺🇸

Foundation Action

| | |
|-------------------------|------------------------------------|
| Sandra Crandall | Chairman, Board of Trustees |
| Raymond LaJeunesse, Jr. | Vice President and Legal Director |
| Don Loos | Vice President |
| Patrick Semmens | Vice President and Editor-in-Chief |
| Mark Mix | President |

Distributed by the
National Right to Work Legal Defense Foundation, Inc.
 8001 Braddock Road, Springfield, VA 22160
www.nrtw.org • 1-800-336-3600

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.

Mix to US Attorney: Let Workers Refuse to Fund Scandal-Ridden UAW Bosses

Letter exhorts worker-empowering reforms as part of potential federal takeover of UAW

DETROIT, MI – National Right to Work Foundation President Mark Mix sent a letter to US Attorney for the Eastern District of Michigan Matthew Schneider, on the eve of a recent meeting between Schneider and current United Auto Workers (UAW) union President Rory Gamble. Mix urged Schneider to advance worker-empowering reforms for the corruption-ridden UAW during the meeting, which was scheduled to discuss the union's future after a massive embezzlement and racketeering scandal that continues to unfold.

The sprawling federal probe into the union hierarchy has exposed how UAW union bosses siphoned union dues to support their lavish limousine lifestyles, including months-long opulent golf vacations in luxury condos and private villas, custom-made Napa wine, spa and amusement park visits, and \$60,000 cigar-buying sprees.

The investigation has yielded the convictions of at least 14 people, including at least 11 affiliated with the UAW. Gary Jones, who was UAW President up until last fall, pled guilty to embezzling more than \$1.5 million. His last official act as head of the union was to cast the tie-breaking vote to put himself on paid leave and elevate long-time ally Gamble to top boss. Earlier this



Democratic presidential candidate Joe Biden, seen here with former UAW top boss Dennis Williams, is promising UAW officials the power to extract forced dues from every auto worker under their monopoly power.

year, *The Detroit News* reported that Gamble was also the subject of the investigation and suspected of taking kickbacks or bribes from a vendor in exchange for lucrative contracts with the union.

While a full federal takeover of the union has been proposed by federal law enforcement officials, UAW honchos appear to be hoping that a potential Joe Biden presidency will let them avoid such a fate. The UAW hierarchy in April officially endorsed Biden, who has promised to massively increase union bosses'

power over workers nationwide if elected.

In the letter, Mix points out that coercive privileges granted to the UAW by federal law created an environment in which UAW officials could all too easily take advantage of workers.

Letter Pinpoints Coercion as Source of Rampant UAW Malfeasance

“UAW union officials have perpetrated this abuse using the extraordinary powers granted to them by federal law,” specifically “their dual coercive powers of monopoly exclusive representation and authorization to cut deals mandating that rank-and-file workers pay union dues or fees, or else be fired,” Mix wrote.

The reforms Mix urged are designed to “squarely address” this coercive control that union officials have over rank-and-file workers. They include “impos[ing] an immediate recertification vote for every union local touched by the corruption,” “empower[ing] workers as individuals to fight corruption through refusing to fund the UAW,” and “impos[ing] an independent auditor tasked

See ‘*Foundation Insists*’ page 7

❖ UPDATE ❖

As part of its legislative response to the COVID-19 crisis, Congress recently enacted a new one-time benefit for those who wish to make a *tax-deductible* contribution to the National Right to Work Legal Defense Foundation, an IRS recognized 501(c)(3) charity.

Charitable contributions this year (2020) up to \$300, including gifts to the Foundation, can now be fully deducted on your tax return when you file next year -- even if you use the standard deduction and therefore might not otherwise qualify.

Moreover, for Foundation supporters who do itemize, the limit on charitable cash gifts eligible for a deduction has been raised to 100% of Adjusted Gross Income (AGI) for 2020.

Of course, in addition to these added tax benefits, you can be assured that you are assisting in the fight against Big Labor's coercive powers over hardworking Americans.

Push to Remove UFCW Union Could End Pro-Union Boss “Contract Bar” Policy

Non-statutory NLRB policy hinders workers’ right to vote out an unwanted union

WASHINGTON, DC – The National Labor Relations Board (NLRB) has announced that it will review the so-called “contract bar” doctrine, which prevents employees from exercising their right to vote an unpopular union out of their workplace for up to three years if union officials and their employer have finalized a monopoly bargaining contract.

This is the latest development in a case by a Selbyville, Delaware-based Mountaire Farms poultry employee, Oscar Cruz Sosa, against the United Food and Commercial Workers (UFCW) Local 27 union. Cruz Sosa submitted a petition in February for a vote on whether Local 27 should be removed as monopoly bargaining agent in his workplace. The petition was signed by hundreds of his coworkers, more than the percentage required to trigger such a vote.

Worker Obtains Foundation Help after Union Attempts to Block Vote

After he submitted the petition, UFCW bosses immediately claimed that the “contract bar” should block Cruz Sosa and his coworkers from even having an election, because the monopoly bargaining agreement between Mountaire and the union had been signed less than three years earlier.

Cruz Sosa then obtained free legal assistance from National Right to Work Foundation staff attorneys in defending his and his coworkers’ right to vote. With Foundation aid, he also hit UFCW agents with federal unfair labor practice charges for imposing an illegal forced-dues clause on the workplace and threatening him after he submitted the petition.

When the NLRB Regional Director in Baltimore heard the election case, he ruled that the union contract contains an unlawful



Employees at the Selbyville, DE, Mountaire Farms plant rally to vote out unpopular UFCW honchos from their workplace, as union lawyers scramble to block the workers’ votes from being counted.

forced-dues clause that mandates workers immediately pay union dues upon hiring or be fired. Under NLRB precedent, an illegal forced-dues clause means the “contract bar” cannot apply, allowing the vote to proceed.

UFCW’s Desperate Attempt to Block Vote Triggers NLRB Review of “Contract Bar”

Despite the longstanding precedent supporting the Regional Director’s ruling, UFCW union lawyers filed a Request for Review, asking the full NLRB to reverse the Regional Director and halt the election.

In response, Cruz Sosa’s Foundation staff attorneys opposed the union’s efforts to block the vote. They also argued that, if the Board were to grant the union’s Request for Review, it should also reconsider the entire “contract bar” policy, which has no statutory basis in the NLRA. The Foundation’s legal brief noted that the “contract bar” runs counter to the rights of workers under the NLRA, which explicitly include the right to vote out a union a majority of workers oppose.

Just hours after the voting process in the decertification election had begun, the NLRB issued its order granting the union’s Request for Review, while also accepting

the Foundation’s request to reconsider the entire “contract bar” doctrine. The order noted “that it is appropriate for the Board to undertake in this case a general review of its ‘contract bar’ doctrine.”

Given the precedential import of this case, the NLRB solicited amicus briefs on whether the “contract bar” should be allowed to stand. UFCW officials, still desperate to throw a wrench in Cruz Sosa and his coworkers’ effort to vote them out, demanded that the NLRB rescind its request for amicus briefs in the case, but that effort was quickly rebuffed.

“We urge the NLRB to swiftly overturn this outrageous non-statutory policy, which lets union bosses undermine for up to *three years* the free choice of workers that is supposed to be at the center of federal labor law,” commented National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. “The very premise of the NLRB-created “contract bar”, that union bosses should be insulated from worker decertification efforts, is completely backwards.”

LaJeunesse added: “Union officials across the country use all types of tactics to get workers into unions but rely on government power and legal tricks to prevent them from getting out.”

Ohio Public Workers Axe Illegal Restrictions on *Janus* Rights for Almost 30,000

Foundation-backed lawsuit ends AFSCME bosses unlawful “escape period” scheme

COLUMBUS, OH – A lawsuit by four Ohio public employees has secured the end of an illegal dues deduction scheme used by Ohio Civil Service Employees’ Association (OCSEA/AFSCME Council 11) union bosses to block an estimated 28,000 workers from exercising their First Amendment right to stop union dues payments. The workers obtained free legal representation from National Right to Work Foundation staff attorneys in challenging the policy.

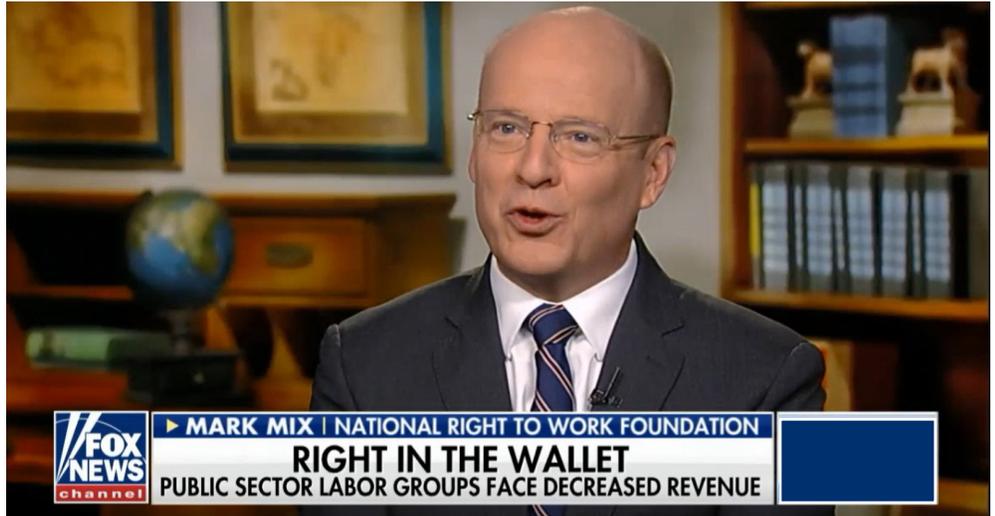
The class-action suit, *Allen v. AFSCME*, challenged OCSEA’s so-called “maintenance of membership” policy, which trapped workers in forced-dues payments except for a brief “escape period” once every three years at the expiration of the union monopoly contract. The workers argued this policy violated their First Amendment rights under the *Janus v. AFSCME* Supreme Court decision.

In *Janus*, the High Court struck down mandatory union fees for public sector workers as an infringement of their First Amendment rights, and ruled that the government can only deduct union dues or fees with an individual’s affirmative consent.

After Freeing Workers, Foundation Attorneys Warn of Future Union Boss Tricks

As a result of the lawsuit, OCSEA officials and the State of Ohio have rescinded the “maintenance of membership” restriction on when state workers can exercise their First Amendment right to cut off union dues deductions.

They must also honor requests to stop dues deductions from any employees who signed the AFSCME dues authorization form at issue in the lawsuit. Finally, AFSCME bosses repaid dues seized illegally under the scheme to the plaintiffs



Two years after Foundation staff attorneys won *Janus*, public sector workers continue to cast off the shackles of forced union dues. In *Allen*, the plaintiffs successfully defended the *Janus* rights of thousands of Ohio public workers.

and more than 150 other employees who tried to cut off union dues deductions after *Janus* was decided.

Knowing that union bosses don’t easily give up in their crusades to coerce workers into paying dues, however, Foundation staff attorneys issued a legal notice shortly after the case wrapped up, warning workers that OCSEA union bosses may soon solicit them to sign new dues deduction forms which are not covered by the litigation. The new forms will “purport to restrict” when employees can stop dues, it warns.

In light of that, the notice reminds workers that under *Janus*, no Ohio public employee can be forced to sign a union dues deduction form as a condition of employment, no matter what union agents may tell them.

Just Latest in String of Ohio Worker Victories over “Escape Periods”

Allen is not the only case in which Ohio public employees have, with National Right to Work Foundation legal aid, successfully challenged union boss attempts to limit their rights.

Seven other Ohio public employees won the first-in-the-nation victory against unconstitutional “escape periods” with Foundation aid in January 2019, after they filed a class-action federal lawsuit challenging a similar policy created by AFSCME Council 8 bosses. They won a settlement ending the restrictions for themselves and their coworkers. That win was followed by two other Ohio public workers, Connie Pennington and Donna Fizer, successfully ending “escape period” restrictions with Foundation assistance later in 2019.

“Although this chain of victories for Buckeye State public employees is certainly encouraging, the widespread nature of these schemes shows there remains much work to do to force union bosses to end their unconstitutional restrictions on public employees’ First Amendment *Janus* rights,” observed National Right to Work Foundation President Mark Mix. “Foundation litigation has already freed hundreds of thousands of public employees from forced union dues, but likely millions more remain trapped and unable to exercise their rights. That is why Foundation litigators will continue to file these cases.” ✚

Leave A Legacy for Freedom in the Workplace

“I think it’s important for you to know that my father was passionate and felt very strongly about supporting the National Right to Work Legal Defense Foundation. He put his heart and soul into earning money throughout his life, so that he would be able to support charities that he firmly believed in . . .

“ . . . He handpicked the National Right to Work Legal Defense Foundation because of their strong ethics.”

Those touching words were in a letter that the Foundation recently received from the daughter of a longtime Foundation donor, who recently left the Foundation a generous gift as part of his estate plans.

Since 1968, your Foundation has been the only national litigating organization devoted to a single purpose: Advancing the cause of individual liberty in the workplace by providing free legal aid to workers victimized by compulsory unionism.

None of the Foundation’s work would be possible without the generosity of our supporters. One way some longtime supporters have chosen to support that critical work is by including the National Right to Work Foundation in their estate plans.

Doing so may be *easier* than you think!

Here is sample language for a gift in your Will or Trust:

I give, devise and bequeath to National Right to Work Legal Defense and Education Foundation, Inc., 8001 Braddock Road, Springfield, VA 22160, for its general purposes:

- a. *The sum of \$ _____; or*
- b. *Name a particular investment or piece of property with legal description, custodian, etc., as applicable, or*
- c. *_____ percent of the rest, residue, and remainder of my estate, including property over which I have a power of appointment; or*
- d. *All the rest, residue and remainder of my estate, including property over which I have a power of appointment.*

You can make the National Right to Work Foundation a beneficiary of a specific amount from your estate or of a residual bequest. A residual bequest comes to the Foundation after your estate expenses are paid and specific bequests are distributed.

As in all estate matters, we advise that you consult your estate advisor or tax attorney. If you have any questions, please contact Ginny Smith, Foundation Director of Strategic Programs at 1-800-336-3600.

All gifts to the Foundation are tax deductible. However you choose to support the National Right to Work Legal Defense Foundation, know that your support will make a difference in the fight against forced unionism!

Oklahoma Sysco Employees Boot Unpopular Teamsters Bosses from Warehouse

Union officials too afraid of results to hold a vote after majority of workers sign petition against union

OKLAHOMA CITY, OK – With free legal aid from National Right to Work Foundation staff attorneys, Sysco Oklahoma warehouse employee Henry Weilmuenster and his coworkers have successfully removed an unwanted Teamsters union from their workplace.

Weilmuenster and his coworkers achieved their victory by taking advantage of the rights won by Foundation staff attorneys in the National Labor Relations Board's (NLRB) 2019 *Johnson Controls* decision. In *Johnson Controls*, the NLRB ruled that an employer can withdraw recognition from a union if it receives a majority-backed employee petition opposing the union within 90 days of a monopoly bargaining contract expiring. Union officials then have a 45-day window to contest such a withdrawal of recognition, but only by requesting a secret-ballot vote among the employees in the workplace on whether the union should stay.

In December 2019, Weilmuenster submitted both a petition to the NLRB for a secret-ballot vote to



Sysco employee Henry Weilmuenster and a majority of his colleagues backed two petitions which sought to eject unpopular Teamsters officials from their warehouse.

remove the union and a petition to Sysco asking that it withdraw recognition of the Teamsters union at the first available opportunity. Both requests were supported by a majority of his coworkers.

Though NLRB Region 14 officials in January blocked Weilmuenster and his coworkers' request for a decertification vote in response to dubious "blocking charges" from Teamsters officials, Sysco ultimately withdrew recognition from the Teamsters union based on the showing of majority employee support for withdrawal in Weilmuenster's petition. Under *Johnson Controls*, Teamsters honchos had a 45-day window to file for a secret-ballot election to reinstall the union, but did not do so -- apparently because they feared an election loss. After that, the union was gone for good.

"This case demonstrates why *Johnson Controls* is so important," commented National Right to Work Foundation Vice President Patrick Semmens. Union bosses should not be allowed to maintain monopoly power over workers through legal maneuvering when there is clear evidence that a majority of workers want the union out of their workplace." ✚

Foundation Insists on Worker Freedom as Part of Reformed UAW

continued from page 3

with providing full transparency to rank-and-file workers of all union financial transactions."

Mix concluded by pressing Schneider to "try some new ideas" that focus on empowering the workers "whose trust and money has been systematically stolen" in light of past fixes that have not deterred other union bosses from abusing their power.

Biden Presidency Poised to Let UAW Upper Echelon Off the Hook

If, as UAW brass hope, Biden is elected president, all worker victims of the UAW corruption could be

forced to once again pay money to the union or else be fired. In 27 states, including Michigan where the UAW is headquartered, Right to Work laws ensure that no worker can be fired for refusing to tender dues or fees to a union hierarchy as a condition of employment. Biden has promised to ban these laws if elected.

"The revelations of greed and shamelessness that continue to arise in the UAW probe are no surprise to anyone who is familiar with the coercive privileges granted union bosses by federal law," commented National Right to Work Foundation President Mark Mix. "Though we urge Mr. Schneider to push the reforms detailed in our letter which will put the power to hold union

officials accountable in workers' hands, there is ultimately no place in federal law for provisions that force workers to pay union bosses to keep or get a job."

Mix continued: "Joe Biden and other forced-dues proponents ought to explain why they believe tens of thousands of workers in non-Right to Work states should have been fired had they sought to cut off the forced dues being paid to Gary Jones' corrupt UAW." ✚

Connect with us today!

facebook

fb.com/NationalRightToWorkFoundation

twitter

[@RightToWork](https://twitter.com/RightToWork)

Foundation-Backed Rules Now in Effect

continued from page 1

precedent won by Foundation staff attorneys for workers in the 2007 *Dana Corp* NLRB decision.

Under the *Dana Corp.* system, employees subject to “Card Check” drives and so-called “voluntary recognition” can promptly file for a secret-ballot election to contest the installation of a monopoly representative at their workplace.

Foundation Prepares to Counter Dubious Claims of AFL-CIO Suit Against NLRB

Unwilling to lose their power to block workers’ efforts to vote them out, the AFL-CIO filed suit against the rules even before they went into effect. The union boss lawsuit alleges, among other things, that the NLRB was misusing the rulemaking process by advancing these protections for independent-minded workers, even though union bosses widely cheered Obama NLRB efforts to use rulemaking to expand union boss power.

Foundation staff attorneys quickly began preparing to counter the AFL-CIO’s lawsuit aiming to reverse these reforms.

“Anyone who is familiar with the tactics of union bosses knows that they will fight tooth and nail to keep government-granted privileges in place that allow them to force their one-size-fits-all ‘representation’ on workers, even when a majority oppose their presence,” observed National Right to Work Foundation Vice President Patrick Semmens. “Foundation supporters should be proud that their advocacy helped obtain these new protections for workers opposed to unionization, but as the union boss lawsuit shows, the Foundation’s litigation program will continue to be critical to defending the rights of independent-minded workers.”



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Union bosses are fuming about our latest victories.

Following years of advocacy by your National Right to Work Foundation, backed up by numerous petitions to the Board signed by thousands of Right to Work supporters, the National Labor Relations Board (NLRB) has officially implemented new rules to make it easier for independent-minded workers to escape forced unionism.

As you will read in this issue of **Foundation Action**, these rules end two of union bosses’ go-to tactics -- “blocking charges” and the “voluntary recognition bar” -- used to trap workers in unions they oppose.

But the fight isn’t over yet. Even before the new rules went into effect, union lawyers filed a lawsuit seeking to overturn the changes.

Now Foundation staff attorneys are preparing to defend these Foundation-advocated rules changes in federal court.

Meanwhile, your Foundation continues to take legal action at the NLRB to eliminate other non-statutory policies that trap workers in union ranks and forced dues. For example, your Foundation has now brought a case (see page 4) where the NLRB will reconsider the “contract bar” which blocks workers from voting out a union for up to three years when a union contract is in place.

We are also helping workers enforce their rights under the Foundation-won 2019 landmark *Johnson Controls* NLRB decision, which curtailed union tactics to trap workers in a union for years even when a majority of workers want nothing to do with so-called union “representation.”

Of course, these victories against coercive unionism are only made possible through the generous support of individuals like you.

Thank you for allowing us to fight for these independent-minded workers.

Sincerely,

Mark Mix