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Newsletter

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Energy Builds For National Right to Work Law

January Supreme Court Hearing Spotlights Forced-Unionism Wrongs

Thanks to one of the most widely discussed cases to come before the U.S. Supreme Court in its 2015-2016 term, the injustice of compulsory unionism is now extraordinarily high in the public eye.

On January 11, the High Court heard oral arguments in *Friedrichs v. California Teachers Association*, a case brought by the Center for Individual Rights and made possible by National Right to Work Legal Defense Foundation-won judicial precedents over the past four years.

In the arguments' wake, millions of Americans who may up to now have paid only passing attention to the Right to Work issue learned from the media about Golden State educator and lead plaintiff Rebecca Friedrichs and her coplaintiffs' quest to vindicate their constitutional rights.

As journalist Deroy Murdock explained in a syndicated column, at the oral arguments, the plaintiffs' attorney "told the Court" that they have "a basic human right" under the First Amendment "not to subsidize" union bosses' schemes to get their employers to "implement policies" that the plaintiffs reject.

Friedrichs Plaintiffs' Stance Resonates With Public Opinion

"Poll after poll shows that the message of the *Friedrichs* plaintiffs is one to which the American people is very receptive," said National Right to Work Committee and Foundation President Mark Mix.

To illustrate his point, Mr. Mix cited an August 2014 nationwide scientific survey of adults aged 18 and over conducted by Gallup, Inc.

The poll found that 82% of adults agree that "no American should be required to join any private organization, like a labor union, against his will."

"Unfortunately," observed Mr. Mix, "federal labor policy has long been in conflict with the common-sense views of the vast majority of ordinary citizens.

"For more than eight decades, it has explicitly authorized the termination of employees for refusal to join or pay dues or fees to a union, even if they don't want it, and never asked for it."

Friedrichs Decision Probably Won't Protect Private-Sector Employees' Freedom

"While a favorable outcome in *Friedrichs* could potentially end compulsory financial support for unionism in the public sector," Mr. Mix continued, "it is unlikely to furnish any new protection for private-sector employees, who are subject to federal labor law.

"That's one reason why grass-roots Right to Work supporters must continue to focus on the legislative arena."

To take advantage of the increased energy of supporters of voluntary unionism, this winter the Right to Work Committee is intensifying its efforts to secure recorded congressional votes on legislation to rescind Big Labor's power to collect private-sector forced dues and fees.

In the current Congress, national Right to Work legislation has been introduced in

See **Repeal** *page 2*

Real, Disposable Income Per Capita*

Right to Work States: $39,932
Avg. Disposable Income

Forced-Unionism States: $37,643
Avg Disposable Income

Top Eight States

1. Wyoming**
2. North Dakota**
3. Nebraska**
4. Virginia**
5. Texas**
6. Kansas**
7. Iowa**
8. Oklahoma**

*2014 Cost of Living-Adjusted Disposable Personal Income Per Capita: Sources: Bureau of Economic Analysis, U.S. Commerce Department, Missouri Economic Research and Information Center **Right to Work States

The eight top-ranking states for cost of living-adjusted disposable income all have Right to Work laws. The average Right to Work state resident's real, spendable, after-tax annual income is nearly $40,000.

Federal Compulsory-Dues Repeal Needed

Continued from page 1

the upper chamber as S.391 by Sen. Rand Paul (R-Ky.) and in the lower chamber as H.R.612 by Rep. Steve King (R-Iowa). These two measures had a combined total of 129 sponsors as of February 1, when this Newsletter went to press.

S.391/H.R.612 would not add a single word to federal labor law.

Instead, this legislation would simply repeal the current provisions in the federal code that authorize and promote the termination of employees for refusal to pay money to an unwanted union.

Evidence Indicates National Right to Work Law Would Boost Disposable Incomes

"A lopsided majority of Americans think compulsory unionism is just plain wrong. First and foremost, it's a moral issue," said Mr. Mix.

"At the same time, of all the economic reforms Congress may consider this year, S.391 and H.R.612 surely have the greatest potential to boost incomes and jobs.

"Just look at the experience of the states that already had Right to Work laws on the books as of 2014.

"U.S. Commerce Department data, adjusted for regional cost-of-living differences according to an index calculated by the Missouri Economic Research and Information Center, a state government agency, show that in 2014 Right to Work states had an average per capita disposable income of $39,932.

"That's more than $1200 higher than the national average and nearly $2300 higher than the average for the 26 states that still lacked Right to Work protections in 2014.

"The eight top-ranking states for cost of living-adjusted disposable income per capita are all Right to Work states."

(For more information, see the chart on page one.)

After Voting in Favor of Forced Dues, Five Senators Were Defeated in 2014

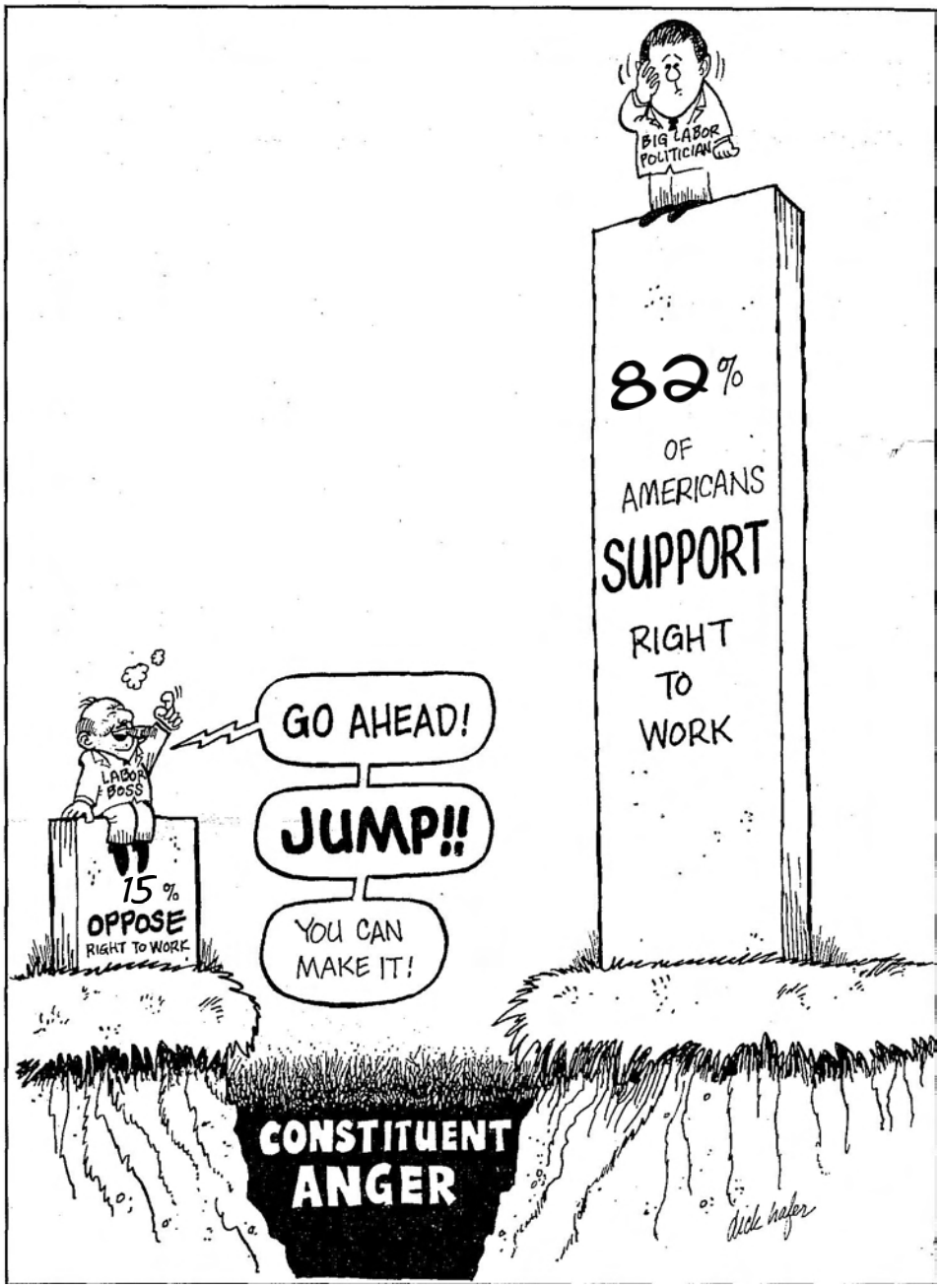
Mr. Mix acknowledged that, if Senate Majority Leader Mitch McConnell (R-Ky.) and House Speaker Paul Ryan (R-Minn.) heed the pleas of freedom-loving Americans and allow roll-call floor votes on S.391 and H.R.612 this year, the Big Labor machine will very likely muster sufficient votes to block the legislation.

"If for no other reason than union-label President Barack Obama's veto pen, it's safe to predict forced-dues repeal won't become law this year," said Mr. Mix.

"But recorded floor votes will pave the way for adoption of a national Right to Work law within the next few years."

Mr. Mix recalled that, in the wake of a previous Senate roll call putting all members of the chamber on the record as supporting or opposing Big Labor's forced-dues privileges, five anti-Right to Work senators were defeated in the 2014 elections. And four of these Big Labor senators were defeated by uanabashed Right to Work supporters.

"In 2016, it's more important than ever before that ordinary Americans know which of their federal politicians will stand up to the union bosses, and which won't," said Mr. Mix. "And the record shows that, if freedom-loving citizens do have this information, they will use it to build pro-Right to Work majorities in both chambers of Congress."



CREDIT TO: DICK HAFER FOR NRTWC

If Committee members secure a roll-call vote on the National Right to Work Act, Big Labor politicians can either vote for it, or vote against it and face the consequences, both this fall and in the years to come.

West Virginia Senate Passes Right to Work Bill

Mountain State Close to Becoming 26th to Bar Forced Union Dues

Just a little over a year ago, this Newsletter singled out West Virginia for the remarkable progress it had made towards enacting a state law to protect employees from compulsory union dues and fees.

The January 2015 cover article reported that in the just-concluded campaign cycle Mountain State voters had "elected a total of 37 avowedly pro-Right to Work members to their state House of Delegates."

Prior to the 2014 elections, the article added, "just 16 of the chamber's members had gone on the record in opposition to the firing of employees for refusal to bankroll a union."

It wasn't difficult to discern a year ago that West Virginia was well on its way to becoming a Right to Work state. But now it seems that freedom-loving West Virginians could achieve that goal even sooner than many sympathetic observers had anticipated.

CREDIT TO: W.Va. PUBLIC BROADCASTING

Late last month, the Committee's Greg Mourad told West Virginia delegates: "It is an outrage to force people to pay for . . . so-called 'representation' that they did not ask for, do not want, and would be better off without."

'Today Is an Important Step in Moving West Virginia Forward'

On Thursday, January 21, a 17-16 majority of state senators in Charleston, brushing aside Big Labor bluster and threats, voted to adopt S.B.1, legislation that would, as a Wall Street *Journal* editorial the following Monday accurately explained, let "workers choose for themselves whether to join a union."

Pro-Right to Work chamber leaders emphasized the strongly positive impact S.B.1 would have, based on the ample experience of the 25 states that have already enacted such measures, on job and income growth in their state.

"I believe this is a critical first step toward bringing about the kind of change in West Virginia that is desperately needed to jump start our struggling economy," declared Senate President Bill Cole (R-Mercer) in a statement issued shortly after the vote.

"[T]oday is an important step in moving West Virginia forward."

National Right to Work Committee Vice President Greg Mourad concurred with the assessment of Mr. Cole and other elected officials that, by banning forced union dues and fees as a job condition, S.B.1 would help West Virginia's economy.

But the primary reason S.B.1 should become law, said Mr. Mourad, is that it would "free thousands of West Virginia workers from being forced to pay tribute to a union boss for the privilege of getting and keeping a job so they can provide for their families."

Ordinary citizens' understanding that compulsory union financial support is just plain wrong, much more than economic considerations, is what drives polling such as an August 2015 scientific survey sponsored by the West Virginia MetroNews radio network.

This poll found that, by nearly a three-to-one margin, likely voters favor passage of a Right to Work law that says "each worker has a right to hold a job in a company, no matter whether he joins the labor union or not."

'Bulk of the Credit' Should Go to Grass-Roots Citizen Activists

After being approved by the West Virginia Senate, S.B.1 moved to the Judiciary Committee of the state House of Delegates.

Mr. Mourad visited Charleston on January 28 to testify before that panel in favor of S.B.1.

Subsequently, the measure was approved for floor action.

Mr. Mourad vowed that, prior to the House floor vote, expected to occur soon after this Newsletter goes to press, the Committee would again mobilize its 10,000 members in the Mountain State as well as thousands and thousands of other identified Right to Work supporters to contact their elected officials.

"Our regular sources inside the West Virginia Legislature believe there is an excellent chance that S.B.1 will win House approval," said Mr. Mourad.

"Of course, the bulk of the credit should go to the grass-roots citizen activists, many of them National Right to Work Committee members, who helped push this measure through the state Senate and will continue fighting until they prevail.

"Union-label Gov. Earl Ray Tomblin [D] is vowing to veto any attempt to protect his state's employees from compulsory unionism.

"But under West Virginia law, it only requires constitutional majorities of both legislative chambers, not supermajorities, to override a veto.

"And it now seems there is a strong possibility that a veto of S.B.1 can be overridden."

For more coverage of West Virginia's bid to become America's 26th Right to Work state, see next month's edition of the National Right to Work Committee Newsletter.

Presidential Survey Program Is Working

Two 'Top-Tier' Candidates Now Pledging to Back Forced-Dues Repeal

As this Newsletter edition goes to press on February 1, just as the Iowa caucuses are occurring, National Right to Work Committee leaders are encouraged by what the Committee's 2016 presidential survey has accomplished so far.

Six candidates who are still in the race at the start of the month have responded to their Right to Work candidate surveys and staked out their position 100% in opposition to compulsory unionism.

Among the candidates who have pledged full support for Right to Work are U.S. Sens. Ted Cruz (Texas) and Marco Rubio (Fla.).

That means two of the three GOP candidates ranking the highest in the famous *Real Clear Politics* (*RCP*) average of nationwide polls have sent a clear signal of their intent to stand up against forced unionism if elected.

Trump, Carson and Bush Campaigns Have Yet to Respond To Right to Work Questions

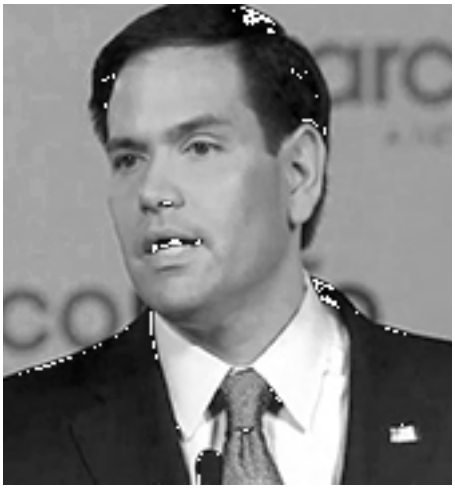
Unfortunately, the other three GOP candidates who are, at press time, in the *RCP*'s top five have yet to return their Right to Work questionnaires.

"As 2016 Iowa caucus participants cast their ballots, Donald Trump, Ben Carson, and former Florida Gov. Jeb Bush were, at least for the moment, still sitting on the fence with regard to compulsory unionism," said National Right to Work Committee President Mark Mix.

"But the presidential primary season is just getting underway. There's still time for Mr. Trump, Mr. Carson, Mr. Bush, and other nonresponsive candidates who remain in the race to stand up for the Right to Work."

Mr. Mix added that the same goes for this year's Democrat presidential candidates; however, given Big Labor's long-time domination of their party's nominating process, it is unlikely any of them will ever respond favorably to their Right to Work surveys, if they respond at all.

In fact, former U.S. Sen. Hillary Clinton (N.Y.), Sen. Bernie Sanders (Vermont), and former Gov. Martin O'Malley (Md.) have up to now been so eager to woo Big Labor's support that they are all actually pledging explicitly to veto any national Right to Work legislation that reaches their desk.



CREDIT TO: WWW.YOUTUBE.COM

On January 12, Marco Rubio became the latest presidential hopeful to pledge 100% Right to Work support.

To clarify the intentions of all of the announced candidates seeking the GOP and Democrat presidential nominations, last fall the Committee mailed surveys to their campaigns, asking where the candidates stand on nine key compulsory unionism-related issues.

Committee Ready to Mobilize Supporters Across the Country

In December and January, the Committee turned up the heat by mailing letters to pro-Right to Work citizens in several early caucus and primary states. The letters mobilized freedom-loving Americans to contact the candidates and urge them to take a clear stand against compulsory unionism.

"For decades, polls have shown that the vast majority of Americans who regularly vote in federal elections believe laws and other policies that favor forcing workers to pay union dues or fees as a condition of employment are just plain wrong," said Mr. Mix.

To ensure that forced unionism remains a key issue in the ongoing presidential nomination process, the Committee is now ready to continue mobilizing citizens in the 12 states that hold primaries and caucuses on March 1, and across the rest of the nation.

Committee President: Ideal Is For All Candidates To Back Right to Work

"I would be overjoyed," said Mr. Mix, "if all the candidates decided, in response to grass-roots activism, to oppose forced unionism in the future, regardless of where they have stood up to now.

"But if it turns out there is only one pro-Right to Work presidential candidate on the ballot in November, I'm confident that candidate can deploy the Right to Work issue advantageously, despite all the forced-dues money the Big Labor political machine will undoubtedly spend.

"And Right to Work members and supporters will have a very positive impact by helping millions of other Americans see how important the compulsory-unionism issue is, and letting them know exactly where the candidates stand."

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Written and Distributed by:

National Right to Work Committee®
8001 Braddock Road
Springfield, Va. 22160
E-mail: Members@NRTW.org

Stanley Greer Newsletter Editor
Greg Mourad Vice President
Mary King Vice President
Matthew Leen Vice President
Stephen Goodrick Vice President
Mark Mix President
Editorial comments only: stg@nrtw.org

Contact the Membership Department by phoning 1-800-325-RTWC (7892) or (703) 321-9820, or faxing (703) 321-7143, if you wish to:

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Florida NEA Union Boss Guilty of Grand Theft

Monopolistic Government Unionism and Corruption Go Hand in Hand

Florida is one of just a handful of states in which the monopoly-bargaining privileges of government union officials, including teacher union bosses, are constitutionally enshrined.

In practice, what this means is that in order to eliminate or even roll back substantially the scope of Big Labor's effective veto power over proposed reforms in the way civil servants are compensated and managed, citizens will need to amend the Florida Constitution.

As a consequence of union monopoly bargaining, teachers, along with other public employees, are almost completely dependent on union officials for their job security and pay increases.

Recognizing that they have to rely on union bosses to defend their interests, regardless of how well they think Big Labor does the job, the overwhelming majority of unionized public employees in Florida opt to join and pay dues.

They join and pay dues even though the Sunshine State's Right to Work law says they can't be fired for refusal to do either.

CREDIT TO: WPLG-TV(ABC) -- MIAMI

Former union czar Pat Santeramo and his cohorts used "fraudulent reimbursements" to "conceal and launder" $25,000 in union treasury money funneled to politicians Hillary Clinton and Alex Sink.

'This Was an Easy Opportunity To Steal Thousands Of Dollars at a Time'

Over the years, government union kingpins in Florida have time and again abused the special privileges they enjoy.

In 2003, for example, an FBI raid of the United Teachers of Dade (UTD/AFT/NEA) uncovered financial records showing that then-President Pat Tornillo had purchased $4300 sofas, $3600 loveseats, $400 soap dishes, $300 toilet-roll holders, and much more with teachers' dues money.

And in 2012, the former president of the Broward Teachers Union (BTU/AFT/NEA), Pat Santeramo, was arrested and charged with 20 criminal counts. Last month, a Broward County jury convicted him of grand theft, fraud, money laundering, and charges involving illegal campaign contributions.

During the trial that preceded the January 20 verdict, contractor David Esposito testified that he had conspired with the BTU chieftain to overcharge dues-paying union members for an array of services.

Again and again, Mr. Esposito would kick back part of the fraudulent fees he had collected to Mr. Santeramo.

One particularly outrageous scheme involved a $24,000 project completed by the repair company Advanced Elevators. The billing went through Mr. Esposito's company, Marstan Construction. Mr. Esposito testified he had inflated the charge to $44,000, paid Advanced Elevators the promised amount, and split the other $20,000 with Mr. Santeramo.

"This was an easy opportunity to steal thousands of dollars at a time," said Assistant State Attorney David Schulson. "It was money that had been delivered to the union by thousands of hardworking teachers."

'Is It Wonderful . . . You Will Rarely Find Flowers That Are Fragrant . . .?'

According to trial testimony, Mr. Santeramo raked in more than $165,000 in illegal kickbacks from Marstan Construction.

Witnesses also testified that he had illegally used union treasury funds to reimburse union staff for campaign contributions to Big Labor politicians like Hillary Clinton and 2010 Democrat gubernatorial nominee Alex Sink.

And next month Mr. Santeramo is scheduled to go on trial again, this time in federal court, on charges that he helped embezzle more than $35,000 in money that was supposed to go toward "training programs and leave time for teachers working on 'accountability projects.'"

National Right to Work Committee Vice President Mary King commented:

"Teacher union bosses routinely claim they wield their monopoly-bargaining privileges to advance the interests of public educators, but the records in the Santeramo prosecution and multiple other similar corruption cases show how easily these privileges can be used to line union bosses' own pockets.

"There's no question this is systematic corruption. That's underscored by the fact that, even as Mr. Santeramo was under criminal investigation and vast amounts of funds were unaccounted for, his successor as BTU boss okayed a $175,000 payout to the former union honcho for unused vacation and sick leave!

"Public-sector union monopoly bargaining is a classic example of state-sanctioned compulsion in which, to borrow the words of 19th Century British philosopher Auberon Herbert, the individual employee who opposes a union boss is 'made to serve his ends, if he can get power enough to force these ends upon him.'

"He continued: 'Is it wonderful then,' that in such a garden, 'you will rarely find flowers that are fragrant, and fruits that are clean and wholesome.'

Big Labor Shill Smears Independent-Minded Teachers

Brushes Aside Facts Union Bosses Opted Not to Contest in Court

As a consequence of U.S. Supreme Court oral arguments that took place on January 11 (see page eight of this Newsletter for more about them), the legal case *Friedrichs v. California Teachers Association* received an unprecedented amount of media attention last month.

This ongoing, landmark suit filed by 10 independent-minded Golden State teachers challenges the constitutionality of state laws authorizing the termination of public servants for refusal to pay forced nonmember fees to an unwanted union.

A final High Court decision is not expected for several months. But at least one significant matter of contention between the two sides in *Friedrichs* is already resolved.

CREDIT TO: WWW.ZOCALOPUBLICSQUARE.ORG

Richard Kahlenberg (pictured) once wrote a glowing biography of teacher union kingpin Al Shanker, but now conveniently forgets about the rigid "single salary schedule" scheme Mr. Shanker helped concoct.

Union Bosses 'Affirmatively Harm [Many] Teachers'

Addressing a false insinuation by the respondents in the case that only union nonmembers who receive "additional compensation as a result of the Unions' efforts" are forced to pay union fees, or be fired, the plaintiffs presented clear evidence to the contrary in a September 2015 brief.

The evidence came straight out of the National Education Association (NEA) union handbook.

"Respondent Unions advocate numerous policies that affirmatively harm [many] teachers," charged the *Friedrichs* plaintiffs.

Quoting directly from the *NEA Handbook*, the plaintiffs continued:

"NEA considers any 'system of compensation based on an evaluation of an education employee's performance' to be 'inappropriate' and 'opposes providing additional compensation to attract and/or retain education employees in hard-to-recruit positions.'"

Teachers Specializing in Hard Subjects Get 'Trapped in Union-Obtained Pay Systems'

Teachers who "care more about rewarding merit than protecting mediocre teachers" should "oppose those policies," continued the plaintiffs. And "teachers who specialize in difficult subjects (like chemistry or physics), but are trapped in union-obtained pay systems that stop them from outearning gym teachers," should also oppose such policies.

In the briefs they filed in November 2015, neither California Teachers Association (CTA/NEA) union bosses nor California Attorney General Kamala Harris, both of whom were arguing in favor of forced union fees, contested the fact that many teachers get paid less due to union monopoly bargaining.

Moreover, Ms. Harris actually admitted in her own brief that union officials "do have substantial latitude to advance bargaining positions that . . . run counter to the economic interests of some employees."

There was no further debate on this point during last month's oral arguments.

'Everyone Is Entitled To His Own Opinion, But Not His Own Facts'

However, after the hearings, which observers overwhelmingly agree went badly for the respondents, were over, a number of Big Labor apologists lashed out at teachers who choose not to join a union as if the exchange in the briefs about the impact of union monopoly bargaining on educator compensation had never occurred.

National Right to Work Committee Vice President Matthew Leen noted that Richard Kahlenberg, a senior fellow at the Century Foundation and the author of a biography of the late teacher union kingpin Al Shanker, is a particularly egregious example.

"In a January 12 New York *Times* op-ed," recalled Mr. Leen, "Richard Kahlenberg simply ignored the uncontested fact that many teachers are hurt economically by union contracts that tie pay exclusively to seniority and years of post-graduate education, regardless of the subject studied and its professional relevance.

"Mr. Kahlenberg certainly can't be unaware that union officials routinely insist on contracts that impose this type of 'single salary schedule,' since it is a scheme Al Shanker himself helped concoct!

"Nonetheless, Mr. Kahlenberg cited the mere fact that many teachers in Right to Work states opt not to join a union as proof that these teachers 'enjoy getting benefits for nothing.'

"Instead of smearing teachers who disagree with him about the merits of monopolistic unionism, Mr. Kahlenberg ought to acknowledge that Kamala Harris got it right: Many teachers may refuse to bankroll a union when they have a choice because they rationally believe it harms them economically.

"Mr. Kahlenberg is entitled to favor compulsory unionism if he wants to.

"But, as the late New York U.S. Sen. Pat Moynihan is once said to have put it, 'Everyone is entitled to his own opinion, but not his own facts.'"

Big Labor Often Hurts Employees

Continued from page 8

finally won.

Mr. Mix explained: "Today there are over 5 million unionized state and local public servants employed in states that currently lack Right to Work protections in the government sector.

"Many if not most of these public employees have good reason to believe that being subject to union monopoly control is a detriment for them.

"For example, Rebecca Friedrichs, the southern California third-grade teacher who is the lead plaintiff in *Friedrichs*, has singled out rigid, Big Labor-favored 'salary schedules' that base educator pay exclusively on paper credentials and seniority as something that 'doesn't make any sense.'

"As a consequence of the salary schedules, as Ms. Friedrichs noted, 'a teacher who just kind of shows up and goes through the motions gets paid the same' as a far superior teacher with the same seniority and 'the same number of [education] units. . . . [Q]uite frankly it's not fair to the ones who work hard.'"

Union Czarina: Ending Public-Sector Forced Dues Could Cost Big Labor Two Million Members

"No one can predict with any precision how many of the public servants who are now paying forced dues or fees for harmful union 'representation' will take advantage of their restored freedom to cut off financial support for union bosses if the Supreme Court reverses *Abood*," acknowledged Mr. Mix.

"But unless Big Labor responds to a pro-First Amendment decision by reforming and serving the needs of ordinary rank-and-file unionized employees better, it stands to lose more than a billion dollars a year."

Mr. Mix pointed out that, while speaking with former Obama strategist David Axelrod in a January 7 podcast, Service Employees International Union czarina Mary Kay Henry predicted that Big Labor could quickly lose "two million" members once *Friedrichs* is resolved.

Why would workers begin acting in droves to withdraw their financial support from Organized Labor once the Supreme Court allowed them to?

Ms. Henry was blunt in her assessment. Several decades ago, "[w]e ceased to be relevant to ordinary people."

Mr. Mix cautioned: "As significant a victory as *Friedrichs* could be for freedom-loving Americans, one shouldn't overstate its potential impact."

Monopoly-Bargaining Privileges Won't Be Affected at All

"The most important limitation," Mr. Mix continued, "is that *Friedrichs* doesn't even challenge labor-law provisions forcing public employees to accept the officers of one union as their monopoly-bargaining agents on workplace matters, including pay, benefits, and work rules.

"The reality is, even in jurisdictions with Right to Work protections, union officials routinely use their monopoly-bargaining privileges like a cattle prod to herd more workers under their control, and punish those who resist.

The late union lawyer Thomas Harris, who served for several years as the AFL-CIO's associate general counsel, vividly expressed the value of monopoly bargaining for Big Labor, even absent forced-dues privileges, in a published speech:

"The fact that the union will negotiate the contract which regulates the incidents of [a worker's] industrial life puts him under powerful compulsion to join the union . . . ."

A second important limitation of *Friedrichs* that Right to Work supporters need to remember is that it will likely have no effect on Big Labor's special privileges in the private sector.

"The 5.6 million unionized private-sector employees who work in states that don't protect the freedom to hold a job without joining and/or bankrolling a union probably won't see any change in their circumstances, no matter how *Friedrichs* turns out," said Mr. Mix.

"National Right to Work Committee members and supporters will be very happy if the High Court partially restores the free choice of state and local government workers, but won't be satisfied until full free choice for workers is restored."

CREDIT TO: FEDERAL ELECTION COMMISSION

The late Thomas Harris: Monopoly bargaining alone puts workers "under powerful compulsion" to join a union.

CREDIT TO: LPWF/ GEORGETOWN U

In a January 7 interview, Service Employees union bigwig Mary Kay Henry predicted two million current forced-union-dues payers in the government sector would quickly cease paying dues once given a free choice.

An End to Government Union-Boss 'Free Riding'?

High Court Seems Poised to Bar Public-Sector Forced Dues, Fees

Nearly four decades ago, the U.S. Supreme Court adopted a strained and constricted interpretation of the First Amendment in order to give a constitutional nod to statutes authorizing the termination of public servants for refusal to bankroll an unwanted union.

But now a High Court majority seems ready to change course.

At last month's hearing in *Friedrichs v. California Teachers Association*, a case challenging forced financial support for government unions on First Amendment grounds, four justices sent clear signals that they are inclined to rule with the plaintiffs.

A fifth justice, George H.W. Bush appointee Clarence Thomas, followed his usual practice of keeping silent during oral arguments.

However, based on his track record over the past quarter century at the High Court, it is reasonable to guess he will vote to bar public-sector forced dues and fees.

Right to Work's *Knox* and *Harris* Wins 'Encouraged' *Friedrichs* Litigants

Friedrichs is based largely on precedents argued and won by National Right to Work Legal Defense Foundation attorneys on behalf of employee clients. In an interview published January 8, the head of the Center for Individual Rights (CIR), which worked together with independent-minded California teachers to bring the *Friedrichs* case together, specifically credited two Foundation precedents for paving the way.

Knox v. SEIU Local 1000, a case argued and won in 2012 by Right to Work attorneys on behalf of nonmembers of the Service Employees International Union who objected to loaning money to its political machine, "made it easier and more timely to bring" the *Friedrichs* case forward, said CIR President Terry Pell.

And the 2014 Right to Work victory on behalf of Illinois home health caregivers in *Harris v. Quinn* gave Mr. Pell and his associates "further encouragement," according to interviewer Tierney Sneed.

'The Union Basically Is Making These Teachers Compelled Riders . . .'

As the *Friedrichs* respondents' counsels of record stood before the High Court on January 11, Chief Justice John Roberts and Associate Justices Sam Alito, Antonin Scalia, and Anthony Kennedy peppered them with questions about whether the 1977 *Abood v. Detroit Board of Education* case had been rightly decided.

Writing for the *Abood* court 39 years ago, Justice Potter Stewart admitted forcing public employees who don't want a union to bankroll union bargaining activities "interferes" with their First Amendment rights, but contended that such interference is acceptable since it is deemed to promote "labor peace."

Justice Kennedy wondered aloud if this government interest could even potentially have sufficient weight to justify systematic and preemptive interference with the First Amendment rights of a whole class of employees:

"I suppose . . . we could assume that a State is always benefitted and . . . is more efficient if it can suppress speech."

Justice Kennedy was also highly skeptical of the respondents' claim that forcing public employees to bankroll bargaining-related speech with which they disagree as a job condition is acceptable as long as the employees remain free in some forums to speak out against union bosses' positions:

"It's odd to say that if X is required to pay $500 for someone to espouse a belief that he doesn't share, that he is now free to go out and . . . argue against it. That means he has to spend another $500 so it balances out? That makes no sense."

And when respondent lawyer Edward DuMont denigrated educators who don't want to bankroll an unwanted union as "free riders," Justice Kennedy sharply retorted:

"The union basically is making these teachers compelled riders for issues on which they strongly disagree."

'[Q]uite Frankly, It's Not Fair to the Ones Who Work Hard'

Mark Mix, president of the National Right to Work Committee as well as the National Right to Work Foundation, said that the *Friedrichs* ruling, expected in roughly four months, could well represent a major step forward for Right to Work supporters.

But even if the best-case scenario unfolds and the High Court issues a strong opinion in favor of the plaintiffs, he cautioned, Right to Work supporters will still have work to do before the bitter struggle against coercive unionism is

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Justice Kennedy: It's "odd" to say, if a public employee who doesn't belong to a union "is required to pay $500 for someone to espouse a belief that he doesn't share, that he is now free to . . . argue against it."