



The Washington Report

The Newsletter of the National Association of Police Organizations

Representing America's Finest

February 26, 2018

U. S. Supreme Court Hears Arguments in Janus Case

On Monday, February 26, the Justices of the U.S. Supreme Court heard oral arguments in the Janus v. AFSCME case, which will decide whether so-called “fair share” or “agency fees” charged by unions to non-members are constitutional. Bill Johnson, NAPO’s Executive Director and General Counsel, attended the arguments at the Court. NAPO had previously filed an *amicus curiae* or “friend of the court” brief with the Supreme Court, arguing that these fees should continue to be allowed. Fair share fees allow unions to recoup some of the costs they incur in collective bargaining and grievance processing for all employees within a collective bargaining unit, services they are obligated by law to provide for all employees within the unit, even those employees who are not members of the union. In this case, an employee objected to paying these fees, arguing that because he is a state government employee, the union when bargaining with the state employer is in effect engaging in political activity, and that he, the employee, cannot be required to support this activity with his wages, if he does not choose to do so. The First Amendment’s Free Speech Clause is at issue here.

The Justices of the Court peppered attorneys for both sides with repeated questions as to the scope of the constitutional claim, as well as the potential consequences for public employees across the nation if such fees were banned. Johnson and other attorneys who were present listened carefully to each Justice’s questions for clues as to how they might be likely to rule. Not surprisingly, the more liberal members of the Court seemed inclined to allow the continuation of such fees, while the more conservative members tended to doubt their constitutionality. The biggest question of all was how newly appointed Justice Neil Gorsuch would rule, since the other eight Justices have had a chance to vote on this issue in an earlier case (the Friedrichs case) which vote ended in a 4 to 4 split. Unfortunately, Justice Gorsuch did not ask a single question, so he did not give any indication of how he might vote yesterday. However, based on the opinions he has participated in on other cases, he is more likely than not to join the more conservative Justices in prohibiting these fees. There is still an outside chance at a compromise, where the Court may disallow compelled fees for purely political activity, but still allow them for core labor issues, such as addressing wages, hours and conditions of employment. The late Justice Scalia had written in favor of such a compromise in an earlier case. But Justice Gorsuch is probably less likely than Justice Scalia to forge a compromise. Call it a 60-40 likelihood of such fees being found unconstitutional.

But as NAPO has emphasized over the last two years, *even an unfavorable decision does not mean that police and public safety labor unions should despair!* Within NAPO, we have many good examples of strong and effective labor unions that operate and succeed in right to work states. Our member groups have attracted, maintained and grown membership ranks despite not having the benefit of fair share fees. By emphasizing the three core strengths of effective workplace representation, legal defense, and political power, these groups frequently see upwards of 90% membership on a completely voluntary basis. NAPO’s upcoming Fall seminar will focus on the Janus decision (expected by June) and how to succeed and thrive in the post-Janus environment.

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If you should have any questions about the Janus case, or the arguments in the Supreme Court, please contact Bill Johnson at bjohnson@napo.org

NAPO Opposes Proposal to Move WTCHP Out of NIOSH

The President's Fiscal 2019 Budget included a proposal to separate the World Trade Center Health Program (WTCHP) out of the National Institute for Occupational Safety and Health (NIOSH), moving NIOSH to the National Institutes of Health (NIH) and leaving the WTCHP within the Centers for Disease Control and Prevention (CDC). NAPO opposes this proposed realignment as the NIOSH Director, Dr. John Howard, and his staff have been instrumental to the success of the WTCHP and to separate their much-needed expertise from the program would be devastating to the 83,000 9/11 first responders who rely on it.

NAPO sent a [letter to the Director of the White House Office of Management and Budget](#), Mick Mulvaney, who is responsible for the proposal, addressing our concerns with the restructuring of these important programs and the impact it would have on the WTCHP. NAPO also met with and spoke to Representative Peter King (R-NY), who, together with Representatives Jarrold Nadler (D-NY) and Carolyn Maloney (D-NY), sent a letter to Director Mulvaney expressing the same concerns as NAPO. Although Representative King voiced his displeasure with the proposal to Director Mulvaney, he does not believe it will go anywhere given that Congress would need to act to move the WTCHP out of NIOSH. The President's Budget proposal is just that – a proposal. We have received similar feedback on the proposal from many Congressional offices.

In 2010, nine years after the terrorist attacks, Congress created the WTCHP to treat those heroes who were suffering devastating health effects from their response and recovery efforts at Ground Zero. In 2015, Congress passed the James Zadroga 9/11 Health and Compensation Reauthorization Act, which renewed the WTCHP for 75 years within NIOSH. The WTCHP has proven vital to those who are grappling with the consequences of their bravery and selflessness on 9/11 and the days and weeks after. 9/11 responders and survivors are still battling serious health crises resulting from exposure to the toxins at Ground Zero. More than 33,000 have an illness or injury caused by the attacks or their aftermath, and over two-thirds of those have more than one illness. Many are disabled and can no longer work. They are suffering from a host of chronic diseases: cancer, asthma, obstructive pulmonary disease and gastroesophageal reflux disease, and many more.

Moving NIOSH into the NIH and leaving the WTCHP within the CDC would upend the WTCHP, which is fully integrated with NIOSH. Dr. Howard and his staff have built the WTCHP and ensured its success in diagnosing and treating the various 9/11 related health conditions. To separate them from the program would be detrimental to the WTCHP and a slap in the face to the 9/11 heroes who rely on them for their continued health and wellness.

NAPO told Congressman King that we stand ready to act if necessary should this proposal somehow gain legs. For the moment, we have laid out our concerns to Director Mulvaney and we will continue to monitor the situation and work closely with those in Congress who have championed the WTCHP and the Zadroga Act with us to ensure the program is protected.

If you have any questions, please contact Andy Edmiston at aedmiston@napo.org.

NAPO Leadership Attends Presidential Medal of Valor Ceremony

On February 20, NAPO President Mick McHale, Vice President John Flynn, Executive Director Bill Johnson and Governmental Affairs Director Andy Edmiston attended the presentation of the Presidential Public Safety Officer Medal of Valor at the White House. The Public Safety Medal of Valor was established by Congress in 2001 to honor public safety officers who have exhibited exceptional courage “in the attempt to save or protect human life”. One of NAPO’s 2017 TOP COPS – Officer Andrew Hopfensperger, Jr. – was awarded the Medal of Valor.

President Trump presided over the ceremony and Attorney General Sessions provided opening remarks. Top leadership of the Department of Justice were also in attendance to honor these brave first responders.

[The 2018 Public Safety Medal of Valor Recipients:](#)

- Corporals Rafael Ixco and Chad Johnson, Deputies Bruce Southworth and Shaun Wallen (San Bernardino County Sheriff’s Department), and Officers Nicholas Koahou and Brian Olvera (San Bernardino Police Department) are being honored for their heroic efforts to end the 2015 terrorist attack in San Bernardino, California.
- Officer Andrew Hopfensperger Jr. (Antigo Police Department, Wisconsin) is being honored for saving many lives during a gunman’s assault on students at a prom.
- Sergeant William Buchanan (Avery County Sheriff’s Office, North Carolina) and Emergency Medical Technician Sean Ochsenein (Putnam County Rescue Squad, Tennessee) are being honored for rescuing a trapped driver from a burning car.
- Firefighter/Harbor Patrol Officer David Poirier Jr. (Redondo Beach Fire Department, California) is being honored for single-handedly rescuing three injured people from dangerous surf.
- Chief Douglas Schroeder (Hesston Police Department, Kansas) is being honored for ending a deadly workplace assault by a gunman.
- Engineer Stephen Gunn (Peoria Fire-Medical Department, Arizona) is being honored for rescuing a man from a burning house without regard for his own safety.

NAPO on the Hill: National Police Week Priorities

NAPO, together with other law enforcement organizations, met with **House Majority Leader Kevin McCarthy’s (R-CA)** staff, to discuss our priority legislation for this Congress, in particular, pro-law enforcement legislation we want to see moved leading up to or during National Police Week. Given the timeframe, the legislation we want to move during Police Week are those bills that are bipartisan and have the support of the Judiciary Committee so that they can move quickly to the House and Senate floors.

We also met with staff of **House Judiciary Committee member Representative Doug Collins (R-GA)** and **House Oversight and Governmental Reform Chair and Judiciary Committee member Representative Trey Gowdy (R-SC)** to discuss our National Police Week priorities.

We discussed the Children of Fallen Heroes Scholarship Act, the Protecting Lives Using Surplus (PLUS) Equipment Act, possible legislation to reform the delivery of the Public Safety Officers’ Benefits (PSOB) Program to disabled law enforcement officers, draft legislation to provide federal health benefits to officers severely disabled in the line of duty, and legislation to enhance officer safety by increasing penalties for the murder, attempted murder, or assault of federal, state, and local law enforcement officers:

The Children of Fallen Heroes Scholarship Act would eliminate the expected family contribution (EFC) used to determine financial need in the case of a Pell Grant-eligible student whose parent or guardian died in the line of duty. Additionally, children of public safety officers who died in the line of duty would qualify for the

maximum Pell Grant award (\$5,815 for FY16-17) if he or she was less than 24 years old or enrolled at an institution of higher education at the time of the parent or guardian's death.

The PLUS Equipment Act would ensure that no president is able to restrict state and local law enforcement's access to surplus military equipment through the Department of Defense 1033 Program and other equipment acquisition programs through the Departments of Justice and Homeland Security without Congressional action. This lifesaving equipment used in search and rescue operations, disaster response, and active shooter situations that they otherwise would not be able to afford. This legislation will stop surplus military equipment from being used as a political football every time a new administration is elected.

PSOB disability reform is necessary as the bar established by the Program to award a disability benefit is set too high and flies in the face of the intent of the Program. The current requirement is that the injury must be so severe that the officer is unable to perform any full- or part-time job that is compensated and that the officer must have no chance of getting better. This standard has led to many officers who are permanently and totally disabled being denied PSOB benefits because they are able to perform menial tasks that could qualify as "gainful work" under the definition, but not by societal standards.

DOJ regulations are still pending that may impact the threshold for qualifying for PSOB disability benefits, which is why we have not introduced legislation yet addressing this issue.

Legislation to provide federal health benefits to officers severely disabled in the line of duty is a priority for NAPO as many officers disabled in the line of duty and no longer employed by their public safety agency often find themselves without health coverage for themselves and their families. By providing these officers and their families access to discounted federal health benefits through the Federal Employee Health Benefits Program, it would help remove a great financial burden from the loved ones of those who sacrificed so much for the safety of our communities.

Increased penalties for the murder, attempted murder, or assault of a federal, state or local law enforcement officer because of their status as a public safety officer will deter such crimes and bring greater protections to officers and the communities they serve. The **Thin Blue Line Act** passed the House in May 2017 and we hope to pass it through the Senate this year. Additionally, we are working to introduced new legislation to add further protections for officers against violent crimes aimed at them.

House Majority Leader McCarthy's staff seemed supportive of our efforts to move this package of priority bills. They had some concerns about the feasibility of moving the PLUS Equipment Act on a fast track given the wide range of opinions on the bill within Congress. We have a lot of work to do to ensure these bills have significant bipartisan support and move through Committee in the next couple of months, but we are confident we will have leadership's support when they reach the House for a vote.

Staff of Representative Collins and Chairman Gowdy also expressed support for our National Police Week bill package. NAPO continues to meet with House and Senate leadership and Committee leadership staff to ensure our ability to move these bills in the run up to National Police Week. If you have any questions about NAPO's meetings on the Hill or the issues addressed, please contact Andy Edmiston at aedmiston@napo.org.

NAPO-Endorsed First Responder Survivors Support Act Introduced

Congressman Raul Ruiz (D-CA) introduced the Heroes Lesley Zerebny and Gil Vega First Responder Survivors Support Act, (H.R. 5060), legislation to increase the Public Safety Officer's Benefits (PSOB) death, disability, and education benefits. NAPO collaborated closely with the Congressman and his staff on this legislation after he was approached by the families of Palm Springs Officers Lesley Zerebny and Jose Gilbert Vega, who were

gunned down in an ambush while responding to a domestic disturbance call on October 8, 2016. The families of the officers feel strongly that the PSOB benefits need to be increased so that the families left behind would not be struggling with mortgages, loan debts and the costs of raising children.

This legislation would increase the PSOB death and disability benefit to \$500,000 as well as increase the PSOB education benefit from \$1,041 to \$2,000 per month to “catch-up” with years of inadequate inflationary increases. It would also fix the benefit determination date by making the PSOB benefit amount set on the date of disbursement, rather than the date of death or injury. The Heroes Lesley Zerebny and Gil Vega First Responder Survivors Support Act would help survivors, disabled officers and their families to get the benefits they so rightly deserve.

NAPO has long fought to increase PSOB benefits, from the first benefit increase in 1988 from \$50,000 to \$100,000 plus annual cost of living indexing, to the next significant raise in 2002 following the September 11, 2001 terrorist attacks when the benefit was raised to \$250,000. Additionally, we worked to ensure these death and disability benefits are federal and state income tax free. The PSOB one-time death and disability benefit is currently \$350,079.

It has been 16 years since the PSOB benefit has significantly increased and NAPO strongly believes that it is time to raise the benefit once again to ensure the families of those who selflessly gave their lives for the safety of our communities.

We look forward to working with Congressman Ruiz on passing this important legislation. If you have any questions about the legislation or NAPO’s work to improve the PSOB benefits, please contact Andy Edmiston at aedmiston@napo.org.

Please monitor NAPO’s website, www.napo.org, and Facebook page: National Association of Police Organizations, and follow us on Twitter at NAPOpolice for breaking news and updates.