Testimony of Jeanette Geary
To the United States House of Representatives
Subcommittee on Health, Employment, Labor, and Pensions
Hearing: November 30, 2023

Chairman Good, Ranking Member DeSaulnier, and members of the Committee,

My name is Jeanette Geary. I am a nurse by profession. I have spent my entire career in direct patient care, always devoted to my patients.

When I was working at the Kent Hospital in Warwick, Rhode Island, there existed a nurses union, called the United Nurses & Allied Professionals ("UNAP"), that I did not vote for or support. However, the union demanded that I pay dues to it or be fired.

I eventually learned of my rights under *CWA v. Beck*, but not from the UNAP union. When I became a nonmember of UNAP and invoked my *Beck* rights, the union refused to acknowledge me, belittled me, and refused to provide any audited financial disclosure about what it did with the compulsory dues it forcibly extracted from my salary.

Having nowhere to turn, I found the National Right to Work Legal Defense Foundation, which agreed to represent me to ensure my *Beck* rights were respected. Little did I know this would end up being a twelve-year legal battle that was litigated up and down the National Labor Relations Board ("NLRB") chain, and in two separate United States Court of Appeals circuits, to secure the proper dues reduction that I was owed.

In late 2009, several Kent Hospital nurses and I resigned our UNAP memberships and objected to paying for the union's political and non-representational activities. After receiving these objection letters, the UNAP President mailed us a letter and three pages of what it called "financial disclosure." The letter claimed that UNAP's major categories of expenses had been verified by a certified public accountant. However, neither the CPA's audit nor the auditor's opinion letter was ever given to

my coworkers and me. UNAP refused to give this information to us, stating that it didn't think it was legally required to do so. This only added to our concerns about the union's inscrutable financial presentation. Worse, the limited disclosure we did get indicated that UNAP was forcing us to pay for all sorts of political lobbying that it did in the legislatures of both Rhode Island and Vermont.

With the Foundation's representation, I initiated an unfair labor practice charge against UNAP with the NLRB on November 23, 2009. After investigating, the NLRB General Counsel issued a complaint alleging that UNAP violated the National Labor Relations Act ("NLRA") by charging me and other UNAP nonmembers at Kent Hospital for expenses incurred in lobbying state legislatures and by failing to provide us with financial disclosure of the Union's expenses based on an independently verified audit.

The federal courts have repeatedly held that unions cannot compel private-sector employees to pay for union political activities, which includes lobbying the government. In contrast, no court has ever held that unions may lawfully force private-sector nonmembers to subsidize lobbying expenses. Nevertheless, that is exactly what UNAP was forcing us to pay for, in both Rhode Island and Vermont's legislatures.

An NLRB Administrative Law Judge (ALJ) heard the case on February 14, 2011. In a March 30, 2011 decision, the ALJ concluded that UNAP nonmembers including me could legally be forced to pay for some of UNAP's lobbying at the Rhode Island and Vermont legislatures. The ALJ also dismissed the complaint allegation concerning the lack of an auditor's verification of the union's claimed expenses. In April and May, 2011, all parties filed exceptions to the ALJ's rulings.

On or about January 3, 2012, while the parties' exceptions were pending, the NLRB lost a quorum to decide cases when NLRB Member Craig Becker's appointment expired. On January 4, 2012, President Obama unconstitutionally "recess appointed" three new members to the NLRB, even though the U.S. Senate was in session. Those "recess" appointments were held unconstitutional by the U.S. Supreme Court

On January 30, 2012, my National Right to Work lawyers and I filed with the NLRB a Motion to Disqualify the recess-appointed Board members due to the illegality of their appointments, and asked the Board to issue no decision in my pending case until the Board consisted of a properly confirmed and lawful quorum. On December 14, 2012, the Board (including the three unlawfully-appointed members) denied that Motion to Disqualify and issued an unfortunate Decision and Order.

As part of its Decision and Order, the unconstitutionally appointed Board requested supplemental briefs from the parties and amici on the application of its new standard for evaluating compulsory fees for union lobbying activities. Although I believed that ersatz Board was powerless to act and its decisions void, my lawyers and I dutifully filed, on March 5, 2013, a supplemental brief challenging the Board's new chargeability standard.

In the meantime, on February 11, 2013, I filed a Petition for a Writ of Mandamus or Prohibition in the U.S. Court of Appeals for the District of Columbia Circuit to prevent the recess-appointee Board from issuing any further rulings in my case until it regained a valid quorum of members. While that mandamus petition was pending the unconstitutionally appointed Board issued no further rulings in my case.

On or about July 30, 2013, the U.S. Senate confirmed new Board members to re-establish a valid quorum. The D.C. Circuit then accepted my voluntary dismissal of the Petition for a Writ of Mandamus or Prohibition based on mootness. On August 13, 2013, my lawyers and I filed with the Board a renewed motion, asking the properly appointed Board to vacate the unconstitutionally appointed Board's ersatz decision, 359 NLRB 469, and to consider my previous exceptions *de novo*.

More than *five years* then passed without the new Board issuing any ruling in my case. During that inexplicable five-year delay the Board never applied its purported new standard for charging nonmembers dues and fees for lobbying in state legislatures. The inordinate five-year delay led my lawyers and me to file a second Petition for a Writ of Mandamus with the D.C. Circuit on January 2,

2019. On January 31, 2019, the D.C. Circuit ordered the Board to file a response to my second Petition for Mandamus. The Board responded on March 1, 2019 by issuing a final and judicially reviewable decision, thus rendering moot the second Petition for Mandamus.

In its decision on the merits, the Board granted my Motion to Vacate the prior invalid decision, 359 NLRB 469, and reconsidered the ALJ's decision *de novo*. The Board concluded that UNAP violated the NLRA by failing to provide me and other Kent Hospital employees with a copy of the audit verification and by forcing us to pay, for expenses lobbying state legislatures on political, ideological and public policy issues. 367 NLRB No. 94 (March 1, 2019). (Copy attached).

But having finally won my case to secure a reduced fee payment from UNAP after ten years of federal litigation, I still wasn't done.

On May 15, 2019, UNAP petitioned the U.S. Court of Appeals for the First Circuit for review of the NLRB's decision in my favor. After another round of briefing and oral arguments, the U.S. Court of Appeals ruled unanimously in my favor on both the audit verification issue and the non-chargeability of union lobbying in state legislatures. *United Nurses & Allied Pros. v. NLRB*, 975 F.3d 34 (1st Cir. 2020) (Copy attached). Still refusing to take no for an answer, the union even filed for en banc review, which was denied. Finally, my case was sent back to the NLRB, where I eventually received back pay for the dues that had been illegally seized from me *eleven years earlier*.

In conclusion, the *Beck* objection system is broken and does not protect employees' rights. Unions do not tell employees about their rights because union officials have no incentive to do so, and regular employees without lawyers like those at the National Right to Work Legal Foundation are left to fend for themselves.

For all of these reasons, I wholeheartedly support the National Right to Work Act, so that no employee will be forced to pay his or her heard earned money to a private organization they do not support. This is America, and membership in a union and payment of dues should be strictly voluntary.

Thank you for your consideration.