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Federalist Society
1015 18th Street, NW
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Dear Federalist Society;

This letter concerns your upcoming 2008 National Lawyers Convention in Washington, D.C. and the scheduling of Judge Timothy Tymkovich of the Tenth Circuit Court of Appeals. He is scheduled to be a moderator for a panel discussion titled *Labor: Labor Initiatives in the New Administration*. This will be held on Friday, November 21, 2008 in the State Room of the Mayflower Hotel.

Judge Tymkovich is a strange choice for moderator of this particular discussion since he upheld a decision in a labor law case that stripped public transit workers of all ability to choose their own bargaining representative and allows transit authorities and corrupt unions to decide who will represent transit workers. The case I speak of is *Burke, Carper v. Utah Transit Authority, Local 382 of the Amalgamated Transit Union and the U.S. Dept. of Labor*. It was filed in district court in Salt Lake City, Utah in 2004. The case number is 2:04-CV-00985 PGC. It was assigned to former district court judge Paul G. Cassell.

I was one of the plaintiffs representing a group of state transit authority railroad employees in this case. For over two years we fought a legal battle in federal court seeking to exercise the established right to decide who would represent us. We rejected the corrupt union that had been forced on us by the transit authority and the Amalgamated Transit Union when the light rail division opened in 1999. We relied on established National Labor Relations Act doctrines and NLRB case law which all supported our legal argument. The case went before Judge Cassell who ruled against us, ignoring seventy years of established labor law. Judge Cassell invented his own legal standard that had no basis in law, denied us discovery and then granted summary judgment to close the case. He denied us due process and created numerous procedural hurdles. This decision was upheld by a panel of the Tenth Circuit Court of Appeals. Judge Timothy Tymkovich was on the panel that

upheld the decision and he wrote the opinion. The case numbers are 05-4079 and 05-4222. Essentially, Judges Cassell and Tymkovich, both well known members of the Federalist Society, ruled that public transit workers have no right to decide who will represent them. The decision protects corrupt, entrenched unions by denying public transit workers the right to vote by secret ballot (or any vote at all) in the appropriate bargaining unit.

I filed judicial misconduct complaints, which were dismissed by the judicial council of the Tenth Circuit. Of course, it should be noted that Judge Tymkovich was on that council. I then sent copies of the complaints to every member of the Senate Judiciary Committee, many members of the House Judiciary Committee and numerous other members of Congress. Judge Cassell resigned two months later. If your organization is going to publicly posture that your goal is to protect worker rights as opposed to union rights then your choice of Judge Tymkovich as moderator is particularly inappropriate. This is especially true since a major concern of our suit was to obtain a bargaining representative that would address safety issues. The present union, which we demonstrated has little support at the rail division, has never taken steps to protect the safety of the employees or, by extension, the public. Any accident that occurs at our operation could logically be traced back to Judge Tymkovich, who could have protected our rights but chose not to, thus protecting the present corrupt union. At a minimum, he could have protected our right to a decision on the merits by remanding the case to decide an amended complaint. No one disagreed that it was timely filed and, in fact, due to his decision has never been decided. Please review the links provided for more information about this.

While I expect that you will review the accompanying links to websites where we are addressing this issue, I will give you a bit of background. When this case was filed in federal district court, the transit authority was in the process of procuring a 480 million dollar full funding grant agreement from the U.S. Transit Administration. Senator Orrin Hatch, a close friend of former judge Cassell, was a proponent of this grant and instrumental in its procurement. Had we prevailed in court, the transit authority would potentially have been ineligible for this federal money because it would have been out of compliance with federal labor law. (Transit authorities must protect the rights of workers to be eligible for federal grants.) At the time, Senator Hatch also had extraordinary power in the selection and advancement of federal judges.

For the record, not one member of Congress whom I have notified about this case has ever defended the actions of the judges involved nor contested my assertions

(with the exception of Senator Hatch who has written me five letters and vaguely defends former judge Cassell but refuses to address specifics of the case.)

I have since used this case to make a very compelling argument that the federal judiciary does not deserve a salary increase until they have taken steps to reform and hold themselves to the highest ethical standards. This case demonstrates that the American public cannot trust that judges such as those involved in our case will always act in accordance with the law. Judge Tymkovich, in particular, showed a shocking disregard for the rights of working class Americans to decide for themselves who will represent them. Yet you allow him to moderate a panel on labor law.

This letter will be posted on our website and sent to individuals and groups interested in judicial matters.

The following links should be of interest to you and I recommend that you review them.

Utah Transit Worker Website - Detailed information about the lawsuit and copies of the judicial misconduct complaints are available at this site. Further, this letter will be posted on our site and updated information will be added later:

<http://utahtransitworker.org/>

Debate about judicial salary increase - This debate took place over the course of several months on the Military Times website discussion board. The debate has frequent hits and we have sent the link to many members of Congress:

<http://www.militarytimes.com/forum/showthread.php?t=1564520>

Thank you for your time and attention to this matter.

Lisa Burke

cc. Hard copies to officers of the Federalist Society.

Electronic and hard copies will be sent to interested parties to be determined.