

2015 ANNUAL REPORT



The Employee Rights Advocacy Institute For Law & Policy advocates for employee rights by advancing equality and justice in the American workplace.

The Employee Rights Advocacy®
INSTITUTE
For Law & Policy

A Note From The President & Executive Director

Patricia A. Barasch & Terisa E. Chaw

It is our pleasure to present this Annual Report highlighting the impact The Employee Rights Advocacy Institute For Law & Policy (The Institute) has had as the country's employee rights advocacy think tank over the last year. We are honored to be a part of a community of supporters that shares a powerful vision of equality and justice in the American workplace. The Institute's Board and staff join us in extending our heartfelt gratitude to you and the hundreds of other visionaries of employee rights whose generous contributions of time, energy, and financial resources make a difference in the lives of ordinary working people. We hope you share our pride in what your investment in The Institute has accomplished.

Momentum is building in our fight to restore fairness and access to the courts for employees. Through our "Strategic Public Education Campaign To End Forced Arbitration Of Employment Disputes," we have been advancing the growing national conversation about the issue sparked by the publication last fall of "Beware The Fine Print," the groundbreaking three-part investigative report by *The New York Times* (NYT). As Teri wrote in a November 12 op-ed in *The Huffington Post*, "Companies That Violate Workers' Rights Don't Get To Rob Them Of Their Day In Court, Too," the NYT exposed how big business is gaming America's civil justice system and depriving millions of workers access to the courts when they violate our nation's employment and civil rights laws.

The Institute has been informing and influencing academic, legal, and political discussions about the need to abolish forced arbitration in the workplace since the organization was founded in 2008 as the public interest arm of the National Employment Lawyers Association (NELA). We are proud to have coined "forced arbitration" in 2009, a term now widely used by Members of Congress, judges, academics, advocacy groups, and the press. As we move into 2016, we are looking forward to the expansion of The Institute's public education efforts. We invite you to visit The Institute's newly designed website, which provides a quicker, friendlier, and more informative user experience. With a grant from the Public Welfare Foundation, this summer we will be publishing *Taking "Forced" Out Of Arbitration: How Forced Arbitration Harms America's Workers* to educate the public about this growing employer practice.

At the heart of everything we do is The Paul H. Tobias (PHT) Attorney Fellowship Program, and we are proud of the many contributions Clark Taylor, our 2015–2016 PHT Fellow, has been making to our work. For example, Clark is the genius behind The Institute's monthly digital newsletter, the *Employee Rights Briefing*, which launched in November 2015 to help readers stay up-to-date on breaking news and emerging trends affecting America's workers.

The PHT Attorney Fellowship Program reflects our commitment to the next generation of employee rights advocates. We were delighted when Matt Koski, our first PHT Fellow, rejoined The Institute and NELA staff late last year as our Program Director. After completing his fellowship in 2012, Matt served as a staff attorney for both organizations. From 2013–2015, he worked as a contract attorney for several NELA members acquiring valuable litigation experience in cases involving forced arbitration, discrimination, retaliation, and whistleblowing.

Like all of our programs, The PHT Attorney Fellowship is fueled by the generous financial contributions of our dedicated visionaries of employee rights. Once again, thank you for inspiring us with your commitment to transforming the American workplace. We look forward to our ongoing partnership as we continue to work together to promote employee rights and protect workers' access to the courts.

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Members of the Visionary Circle make an annual commitment of \$1,000 or more to The Institute.

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Advances In The Civil Rights Battle Against Forced Arbitration In The Workplace

The Institute is proud to lead the movement to end forced arbitration in the workplace, one of the most significant threats to the protection, enforcement, and vindication of employee rights. Our nation's employment and civil rights laws guarantee America's workers freedom from discrimination, harassment, retaliation, wage theft, and unsafe workplaces. By imposing forced arbitration on their employees as a condition of getting or keeping a job, corporations abuse their power to opt out of these laws and the public civil justice system.

The fight against the corporate-imposed practice of forced arbitration in the workplace is a civil rights battle. Forced arbitration is different from voluntary arbitration, and is a result of the unequal bargaining relationship between individual workers and their employers. The practice is anathema to our country's open system of justice because it occurs in secret, private tribunals lacking important legal safeguards, such as the right to appeal the arbitrator's decision, public access to arbitration proceedings that expose patterns of employer misconduct, and other guarantees ensuring a fair process that exist in a court of law.

Advancing the fight to end forced arbitration, on April 29, 2015, Senator Al Franken (D-MN) and Representative Hank Johnson (D-GA) introduced the Arbitration Fairness Act (AFA) of 2015, which would prohibit employers from imposing arbitration on their employees except when knowingly and voluntarily agreed to after a dispute arises or under a collective bargaining agreement. President Barack Obama also took action to limit forced arbitration in the workplace through his Fair Pay and Safe Workplaces Executive Order. Executive Order 13673 was issued on July 31, 2014, and restricts federal contractors and subcontractors that receive \$1 million or more from the U.S. government from imposing forced arbitration on their employees. The Executive Order bars forced arbitration of workplace disputes involving Title VII of the Civil Rights Act of 1964 (covering employment discrimination), sexual assault, or sexual harassment. Under the Executive Order, the decision to arbitrate these types of claims can be made only with the voluntary consent of the worker after the dispute arises. In August 2015, The Institute and NELA submitted joint comments on the proposed rules implementing the provisions banning forced arbitration of the Executive Order.

On October 31, 2015, *The New York Times* (NYT) published the first of three installments of a groundbreaking investigative report, "Beware The Fine Print," sparking a national dialogue on the injustices of forced arbitration. The NYT Editorial Board later called unequivocally for an end to forced arbitration in "Arbitrating Disputes, Denying Justice" (Nov. 8). Numerous other stories and op-eds appeared across the country in regional and national news outlets. In the days following the NYT report, #forcedarbitration was a trending topic on Twitter, reflecting the public's growing awareness and concern.

The Institute's "Strategic Public Education Campaign To End Forced Arbitration Of Employment Disputes" is intended to shape public understanding of the need to reform the law and public policy to eliminate forced arbitration, and we played our part in keeping the conversation about forced arbitration alive and vital. *The Huffington Post* published an op-ed by Institute Executive Director Terisa E. Chaw, "Companies That Violate Workers' Rights Don't Get To Rob Them Of Their Day In Court, Too." *The Hill* ran "American Hustle: The Con(stitutionality) of Forced Arbitration," Institute Board member Professor Imre Szalai's response to the NYT report.

Members of Congress also were galvanized by the NYT report. In the House, Representatives Johnson and John Conyers (D-MI) wrote to House Judiciary Committee Chair Robert Goodlatte (R-VA) citing the NYT report and asking that the Committee hold hearings on forced arbitration. At the same time, Senators Franken and Patrick Leahy (D-VT) sent a letter, co-signed by 14 of their Senate colleagues, to President Obama urging him to "do everything he can to help ban the practice of forced arbitration." They also wrote to leading private arbitration providers raising their concerns about forced arbitration and its negative impact on the rule of law. In early 2016, Senator Leahy further addressed his deep concern about forced arbitration as a fundamental threat to hard-won civil and statutory rights by introducing the Restoring Statutory Rights and Interests of the States Act of 2016.

In sponsoring the legislation Representative Johnson called forced arbitration "A runaway train that immunizes corporations from accountability, undermines the fabric of our laws, and harms consumers and workers."

CULTIVATING THE NEXT GENERATION OF EMPLOYEE RIGHTS ADVOCATES

Employee rights advocates are indispensable to the fight for equality and justice in the American workplace. Through our fellowship and scholarship programs, The Institute plays a unique role in cultivating the next generation of lawyers who are dedicated to representing workers.

The Paul H. Tobias Attorney Fellowship Program

Honoring The Institute's roots as NELA's public interest organization, The Paul H. Tobias (PHT) Attorney Fellowship Program is named for Paul H. Tobias, NELA's Founder and first Executive Director, for the boundless inspiration he has provided to plaintiffs' employment lawyers for more than 50 years. The Fellowship offers a new lawyer who embodies Paul's indomitable spirit the opportunity to work on cutting-edge initiatives at The Institute for two years.

Clark Taylor (pictured), The Institute's third PHT Fellow, has been leading initiatives to expand The Institute's presence on social media and the Web and is responsible for implementing many components of our public education campaign to end forced arbitration in the workplace. Clark was a contributing author to The Institute and NELA's joint comments on proposed rules implementing President Barack Obama's Fair Pay and Safe Workplaces Executive Order which, among other things, makes employers who impose forced arbitration on their employees for certain types of workplace disputes ineligible to bid on federal government contracts of \$1 million or more. He also has been collecting data on employers that impose forced arbitration on their workers and tracking stories of individual employees harmed by the practice.



The Employee Rights Advocacy Scholarship Program

The Employee Rights Advocacy Scholarship Program represents The Institute and NELA's shared commitment that all workers—especially those most vulnerable to illegal employment practices—receive expert legal representation when they are unlawfully mistreated in the workplace. NELA's renowned continuing legal education (CLE) programs are designed specifically by and for attorneys who represent employees in cases involving employment discrimination, wage and hour violations, and other employment-related matters. The Scholarship Program makes these educational opportunities accessible to public interest, legal services, and private practitioners who represent workers and who otherwise would not be able to attend the programs without financial assistance. In particular, The Institute is committed to offering support to lawyers new to the field and who exemplify the next generation of employee rights advocates.

In 2015, The Scholarship Program awarded nearly \$13,000 in scholarships to a diverse group of fifteen employee rights advocates, including eight public interest and legal services attorneys, six private practitioners, and one law student who demonstrated exceptional promise to become a plaintiffs' employment lawyer. The scholarship recipients represent low wage, immigrant, and other workers who have been cheated out of their wages, suffered discrimination, or were retaliated against by their employers. The Institute awarded scholarships for NELA's three major CLE programs, including NELA's signature event, the Annual Convention, which covered a full range of employment law topics over three days. The others were NELA's three-day "Trial Boot Camp" and a two-day seminar on "Protecting Pay: Representing Workers With Wage & Hour Claims."

DONOR SPOTLIGHT:

The Texas FLSA Posse

The three plaintiffs' employment lawyers who call themselves the Texas FLSA Posse—J. Derek Braziel (Dallas), Richard J. ("Rex") Burch (Houston), and David L. Kern (El Paso)—are dedicated to fighting wage theft, as their moniker implies. "FLSA" is the acronym for the Fair Labor Standards Act, the federal law that establishes federal minimum wage, overtime pay, recordkeeping, and youth employment standards. Derek, Rex, and David each have a long and distinguished history helping workers recover unpaid wages, overtime, and other benefits from their employers.

These visionaries of employee rights are longtime members of the NELA/Institute family. David served on NELA's Executive Board for twelve years, and all are frequent speakers at NELA's CLE programs on wage and hour law. They formed the Texas FLSA Posse in 2009 as a vehicle to boost their sponsorship level for NELA's Annual Gala, which supports NELA's *Amicus*, Judicial Nominations, and Legislative & Public Policy Programs. In 2011, the Posse extended its philanthropic commitment to The Institute's Employee Rights Advocacy Scholarship Program.

Although David, Derek, and Rex devote themselves fulltime to what Rex terms "dragon slaying"—that is, relentlessly taking on powerful business interests on behalf of individuals with far fewer resources—they began their careers as corporate defense lawyers. Early on, however, each discovered his true calling to fight the good fight. "I was exposed to the worst corporate America had to offer," Rex recalls. "People not getting paid what they were owed by their employers was, and still is, a huge problem. I wasn't happy helping corporations get away with it. I just felt like I needed to go where my conscience led me, switch sides, and start representing workers rather than businesses."

David had a similar experience. As a young attorney at a large corporate law firm, David witnessed firsthand "the ugly underbelly" of big business and realized he was just not wired to help businesses do injustice to workers. "I left to start a plaintiff-side practice, and I'm glad I did," he says. "Now, I have no trouble looking at myself in the mirror although sometimes that guy looks a lot older than me."

Derek links the choice to "fight for the little guy" to his own background. "My mother worked a lot of overtime, and it was that extra money that allowed me to attend college. I think about people who lose opportunities because companies break the rules for economic gain. As a defense attorney, I saw people systematically and even willfully deprived of the wages they had earned. I got tired of being on the wrong side of justice and started a plaintiffs' practice 13 years ago. It was the best professional decision I have ever made."

As major supporters of The Institute's Scholarship Program, the Texas FLSA Posse makes it possible for public interest and legal services attorneys representing low wage workers to receive the specialized training in wage and hour law NELA provides.

Along with his fellow Posse members, Derek justifiably takes pride in his professional accomplishments. "In addition to righting wrongs, I have seen people have their lives changed when they received the money they had worked for. We have saved people's homes. Our clients have gone back to school, changed careers, and have generally bettered themselves and the lives of their children."

"There is nothing more rewarding than the job I have," Rex continues. "The work is intellectually challenging and stimulating. Our success has real world impact on real working people who are now being properly compensated. This goes beyond our clients. We have changed the way that many industries are doing business."

"People appreciate the work that we do," explains David, whose practice includes representation of employees at all levels of government, from paramedics and municipal police officers to federal agents. He successfully litigated one of his favorite cases

on behalf of a nationwide class of U.S. Customs officers. David remarked, "These are the last people we should not be paying correctly given the importance of their jobs. It took many years of litigation and it was a great win. We changed the law, got them the money they had earned, and helped make the country safer in the process."

The members of The Posse agree that many of the most egregious instances of wage theft involve low wage workers who deserve high quality representation, as well as just compensation for their work, even if their cases cannot be viably litigated by lawyers in private practice. David states, "Some of the hardest wage and hour cases are not the most financially rewarding and advocates for low wage workers, even though they are great lawyers, often do not get the respect they deserve from defense counsel. Any way we can help them and their clients, we need to."

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The Institute gratefully acknowledges the following individuals, law firms, foundations, and other organizations that made contributions to support the work of The Institute in 2015.

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2015 Financial Report

Revenue

Restricted Contributions	\$46,029
Cy Pres Awards	\$70,100
Unrestricted Contributions	\$76,325
Other Income	\$1,492
In-kind Contributions	\$48,914

Total \$242,860

Program & General Expenses

Personnel	\$65,828
General & Management	\$22,226
Fundraising	\$28,509
Program Expenses	\$96,447

Total \$213,010

Net Revenue
Over Expenditures \$29,850

Reserves \$353,801
(12/31/2015)

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