



Supreme Court Holds That Public-Sector Union “Agency Fees” Violate The First Amendment

Janus v. American Federation of State, County, and Municipal Employees, Council 31,
No. 16-1466

Decided June 27, 2018

Today, the Supreme Court held 5-4 that the First Amendment does not permit public-sector unions to collect mandatory fees from non-members to cover the costs of collective bargaining.

Background:

Mark Janus, a non-union State employee, brought a First Amendment challenge to mandatory “agency fees” that public-sector labor unions collect from non-members ostensibly to cover the costs of collective bargaining with government employers. Janus argued that the Supreme Court’s 1977 decision in *Abood v. Detroit Board of Education*—which upheld agency fees because they avoid labor strife and prevent non-members from benefiting from collective bargaining without paying for union membership—should be overruled because agency fees compel non-members to subsidize union speech intended to influence governmental policies on matters of public importance, such as education, healthcare, and climate change, that frequently arise in collective bargaining between public-sector unions and government employers.

Issue:

Whether *Abood* should be overruled and compulsory public-sector agency fees invalidated under the First Amendment.

“Because the compelled subsidization of private speech seriously impinges on First Amendment rights, it cannot be casually allowed.”

Justice Alito,
writing for the 5-4 Court

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Court's Holding:

Yes. Public-sector agency fees violate the First Amendment because they compel non-members to subsidize union speech on matters of public concern. *Abood* is overruled.

What It Means:

- This issue was presented to the Court in 2016 in *Friedrichs v. CTA*. Following the death of Justice Scalia, however, the Court split 4-4 and summarily affirmed the judgment below. In *Janus*, the Court reached the issue that it had not addressed in *Friedrichs*.
- The Court embraced a broad view of the First Amendment's limitations on compelled speech. The agency fees at issue infringed non-members' First Amendment rights by forcing them to lend their support to union speech on a host of controversial issues of public concern that could arise during collective-bargaining discussions. According to the Court, that was unacceptable, and the First Amendment instead requires public-sector employees to affirmatively choose to support a union before any fees can be collected from them.
- The Court expressly overruled *Abood* because its "free-rider" rationale—that agency fees were necessary to prevent non-members from enjoying the benefits of union membership as to collective bargaining without incurring the costs—could not justify the burdens imposed on First Amendment rights by agency fees. The fees were unnecessary to ensure that unions were willing to serve as the exclusive representative for all employees, because that designation included numerous other benefits (such as a privileged place in negotiations).
- The Court's decision invalidates the laws of more than 20 states that require public-sector unions to collect agency fees. Public-sector unions may see their funding and membership levels drop as a consequence.
- The Court's holding applies "when a State *requires* its employees to pay agency fees," and thus does not reach private-sector unions. The Court deemed it "questionable" whether the First Amendment would be implicated when a State merely authorizes—yet does not require—private parties to enter into an agency-fee agreement, but left the question open.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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