

## 15.12: Janus v. AFSCME

### Learning Objectives

- Discuss the impact of the Supreme Court decision in Janus v. AFSCME

On June 27, 2018 the Supreme Court decided the case of Janus v. AFSCME (American Federation of State, County, and Municipal Employees), ruling that agency fees—the fees that unions charge non-members that are covered by collective bargaining agreements—violate those worker’s First Amendment right to free speech. The case was settled in a 5–4 vote with Neil Gorsuch casting the deciding vote. The Trump Administration also filed a brief in support of Janus.

The plaintiff in the case was Mark Janus, a child support specialist at the Illinois Department of Healthcare and Family Services. He joined a lawsuit originally filed by then Illinois governor Bruce Rauner (Republican) in 2015. A federal judge ruled that Rauner had no standing; since he wasn’t paying agency fees, he was insufficiently connected to or harmed by the law and couldn’t proceed. The National Right to Work Legal Defense Foundation and the Liberty Justice Center (funded by Rauner) recruited Janus to carry the case forward.

### Learn More

For perspective on the organizations and interests behind the litigation, read The New York Times article [Behind a Key Anti-Labor Case, a Web of Conservative Donors](#).

A legal precedent for agency fees was established in the unanimous 1977 Supreme Court case *Abood v. Detroit Board of Education*, which distinguished between union membership dues, which must be voluntary and may contribute to political activity and agency or “fair share” fees—generally a percentage of union dues—that are required to cover the cost of union representation, including collective bargaining and arbitration. The Supreme Court heard related arguments in the 2016 *Friedrichs v. California Teachers Association* case that ended in a tie. Janus’ position was that the activities “agency fees” pay for are inherently political and support union policies he doesn’t agree with. Specifically, Janus claimed that the fees violate his First Amendment right of freedom of speech. The union countered that if employees didn’t pay agency fees, they would gain an unfair benefit—essentially, a free ride.

The majority opinion rejected the *stare decisis* principles (precedent) set by *Abood*, stating the decision was “poorly reasoned” and that “the practice of states and public-sector unions collecting agency fees from nonconsenting employees was a violation of the First Amendment, and that no further agency fees or other forms of payment to a public-sector union could be collected, nor could attempts be made to collect such payments from employees without their consent.”<sup>[1]</sup> In a dissenting opinion, Justice Kagan, joined by Justices Sotomayor, Ginsburg, and Breyer, “faulted the Majority for upsetting the balance that *Abood* brought to public-sector labor relations, and for disregarding *stare decisis* principles.”<sup>[2]</sup> Justice Kagan argued that “The balance *Abood* struck between public employers’ interests and public employees’ expression is right at home in First Amendment doctrine.”<sup>[3]</sup> Differences of opinion aside, the result is that public sector unions can no longer charge agency fees and workers must affirmatively opt into union membership, rather than the default being membership.

### PPractice Question

<https://assessments.lumenlearning.co...essments/18219>

So what are the implications for the private sector? As a Washington Examiner headline summarizes, “Extending [the] Supreme Court’s Janus decision to private-sector unions [would be an] uphill battle.”<sup>[4]</sup> In the article, Harvard University labor professor Benjamin Sachs notes that Supreme Court precedent [interpretation of the Constitution] “is generally held to apply to things the government does, not things that private-sector employers do.” However, the article also mentioned that the National Right to Work Legal Defense Foundation followed up the Janus ruling with a request for the Supreme Court to consider a case involving private-sector union fees and quoted Right to Work Foundation president Mark Mix stating the “While this [the Janus] victory represents a massive step forward in the fight to protect American workers from forced unionism, that fight is far from over. There remains much work to do to both enforce and expand upon this historic victory over coercive unionism.” That said, with the percentage of unionized workers in the private sector declining steadily, the primary battleground will likely remain the public sector. For

perspective, Bureau of Labor Statistics data shows that the union membership rate of public-sector workers is approximately 34%—over five times the percent of private-sector workers.<sup>[5]</sup> Education news site The74 described the situation prior to the court's decision: "Janus is a threat to labor because government employees are most of what's left in the movement."<sup>[6]</sup>

The Janus decision not only affected unions, it will have a ripple effect on the politicians, institutions and other interests that unions traditionally support. As The New York Times noted, the Janus decision will also impact "a vast network of groups dedicated to advancing liberal policies and candidates."<sup>[7]</sup> Indeed, liberal activists claim that eliminating the financial support to groups working for civil and immigrant rights and supporting voter registration and Democratic campaigns was the primary goal of conservative groups behind the Janus case. And those groups don't dispute that fact.

Unions were engaged in contingency planning—internally and with their stakeholder groups—well in advance of the Supreme Court decision. For example, the Service Employees International Union (SEIU) reduced its 2018 budget by 30% and has been working with leaders of liberal groups for two years to develop plans to leverage people power (approximately 2 million members) and the union's fund-raising capacity to partially offset the loss of financial support. Although organizations will have to be more selective about the projects they pursue and some programs will have to be scaled back or eliminated, the consensus is that the loss of union contributions will be offset by wealthy liberal donors, individual contributions and the "people power" of union members and other voters.<sup>[8]</sup>

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1. [Janus v. American Federation of State, County, and Municipal Employees, Council 31](#). Oyez. Accessed July 22, 2019. ↵
  2. Ibid. ↵
  3. [Janus v. AFSCME](#). Ballotpedia. Accessed July 22, 2019. ↵
  4. Langford, James. "[Extending Supreme Court's Janus Decision to Private-Sector Unions an Uphill Battle](#)." Washington Examiner. July 17, 2018. Accessed July 22, 2019. ↵
  5. Bureau of Labor Statistics. "[Union Members Summary](#)." January 18, 2019. Accessed July 22, 2019. ↵
  6. Cantor, David. "[Labor in the Age of Janus: 6 Things to Keep in Mind About American Unions on the Eve of a Pivotal Supreme Court Case](#)." The74. June 12, 2018. Accessed July 22, 2019. ↵
  7. Scheiber, Noam. "Supreme Court Labor Decision Wasn't Just a Loss for Unions." The New York Times. July 1, 2018. Accessed July 22, 2019. ↵
  8. Ibid. ↵

## Contributors and Attributions

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