

***Janus v. AFSCME, Council 31* – Bullet Points**

- *Janus v. AFSCME, Council 31* follows *Friedrichs* as a legal challenge to public sector agency fees
 - *Friedrichs v. California Teachers Assn* was decided after Justice Scalia died last year, and ended up in a split 4-4 decision; the result is that the 9th Circuit decision—which ruled in favor of the unions—stands.
- How did *Janus* get here?
 - Similar to *Friedrichs*, the plaintiffs lost at both the federal district court level and in the circuit court of appeals (the 7th Circuit, in this case). The 7th Circuit noted that the existing law is well settled and could be overturned only by the Supreme Court.
- Agency fee background:
 - An agency shop is a type of union security arrangement where employees are not required to join the union as a condition of employment, but are required to pay agency fees to the union. Agency fees are comparable to the dues that members of the same union pay. Generally speaking, a union operating under an agency shop arrangement is required to represent the entire bargaining unit, members and non-members alike. The agency fee reimburses the union for the services it provides to non-members.
 - Union members' dues may be used for essentially any purpose; agency fees may not. Agency fees may be used for political purposes and other purposes not related to collective bargaining *only* if the agency fee payer does not object. The Supreme Court has held that it is unconstitutional to require non-members to subsidize the union's political speech (ex: endorsing a political candidate or lobbying). However, the Court has so far held that the scheme is constitutional if members can "opt out" of that portion of the agency fee.
- Two questions at issue in *Janus*
 - (1) Whether *Abood v. Detroit Board of Education* should be overruled and public-sector "agency shop" arrangements invalidated under the First Amendment; and
 - 2) whether it violates the First Amendment to require that public employees affirmatively object to subsidizing non-chargeable speech by public-sector unions, rather than requiring that employees affirmatively consent to subsidizing such speech.
 - These are essentially the same questions raised in *Friedrichs*. To paraphrase: (1) is the agency fee system itself unconstitutional, and (2) is it unconstitutional to require dissenters to "opt-out" instead of "opting in" to paying the non-chargeable portion of the agency fees.

- Possible outcomes: as with *Friedrichs*, there are multiple potential outcomes, here are three:
 - The Court could side with the union on both issues. The status quo would remain in place. Given the conservative makeup on the Court, not likely. Four sitting justices have indicated previously that they would consider overturning *Abood*, the case that is currently controlling on this issue.
 - The Court sides with the union on agency fees, but requires opt-in instead of opt-out. In this scenario, the Court would find that having to opt-out (instead of opting in) violates the First Amendment. The result would be that non-member employees must continue to pay agency fees, but they would have to opt-*in* if they want to pay the “non-chargeable” (i.e., political) portion, instead of opting out if they don’t.
 - The Court sides with *Janus* on both issues. This is the worst-case scenario for NYSCOPBA and other public sector unions. Non-member bargaining unit employees would no longer be required to pay any fees to the union representing them. Unions would only receive fees from non-members if those employees paid the fees voluntarily. This would provide a financial incentive for public employees to leave their unions.
- When is the Court going to hear/decide this case?
 - The Court has not yet agreed to hear the case, but commentators who follow the Court closely believe it will do so.
 - Since the Court has not yet agreed to hear the case (granted certiorari), the case has not been scheduled for argument, and therefore we also do not know when a decision will be rendered.