

Oral Argument Scheduled in US Supreme Court Regarding First Amendment Challenge to Public Sector Law Agency Fee Requirement

The United States Supreme Court has scheduled oral argument in *Janus v. AFSCME* for February 26, 2018. The case is a First Amendment challenge to an agency fee requirement under a public sector collective bargaining law requiring non-union members in a bargaining unit to pay a fee for the representation they receive in collective bargaining and in the administration of the contract. *Janus v. AFSCME*, United States Supreme Court, Case No. 16-1466. A ruling in *Janus* is expected to be issued by late June.

An agency fee requirement is a form of union security, first introduced in the private sector, and held to be constitutional in the public sector in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). However, in majority decisions written by Supreme Court Justice Samuel Alito over the past few years, the Supreme Court has questioned the constitutionality of mandating non-members to pay an agency fee for representation by a certified or recognized union in the public sector.

If the plaintiff in *Janus* is fully successful before the Supreme Court, *Abood* will be reversed and an “open shop” will become a federal constitutional mandate for the first time. Such a ruling would mean that a public-sector union certified or recognized as the exclusive representative of a bargaining unit will be obligated to represent non-members for free and will still be subject to duty of fair representation claims by dissatisfied non-members.

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