

CLIENT NEWS BRIEF

United States Supreme Court to Again Review Mandatory Union Fees

On September 28, 2017, the United States Supreme Court agreed to review the Illinois case *Janus v. AFSCME, Council 31*, which challenges the constitutionality of "fair share" or "agency" fees collected by unions. A decision in the case is anticipated by June 2018.

Janus challenges the constitutionality of fair share fees (a.k.a. agency fees) under Illinois law. Specifically, the Illinois Public Relations Act allows unions to collect fair share fees from non-union member employees on whose behalf the union also negotiates to cover the costs of negotiating and administering the contract. This law is similar to California law, which allows unions to collect a fair share fee from bargaining unit members who choose not to join the union.

In *Janus*, the plaintiff, a state-employed child support specialist, challenged the mandatory payment of fair share fees, claiming such arrangements are unconstitutional under the First Amendment. *Janus* claims that the fees support a mandatory advocacy group whose speech is designed to influence governmental policies in excess of employees' actual support for the advocacy group and its agenda. The plaintiff seeks to overturn a 40-year old ruling in *Abood v. Detroit* in which the Court ruled that it was constitutional to require all employees to pay to support the cost of bargaining, so long as the fees paid by the workers are not used to cover the cost of political or ideological activities.

If the Supreme Court overturns the *Abood* ruling and finds that fair share fees or agency fees violate constitutional rights to free speech and association, employees would no longer be required to pay anything if they decline membership in the union. Proponents of the *Abood* ruling argue that without such fees, non-members reap the benefits of the union by using their services without bearing the cost.

The *Janus* case is not the first time that the *Abood* ruling has been challenged. *Friedrichs v. California Teachers Association*, a case involving California teachers, was on the brink of overturning the *Abood* ruling. The death of Justice Antonin Scalia in February 2015 left the Supreme Court without a ninth vote, and the Court split 4-4 when it decided the *Friedrichs* case. The appointment of Neil Gorsuch to the Supreme Court may provide the fifth vote needed to overturn the *Abood* case and to find mandatory fair share fees to be unconstitutional.

In addition to the *Janus* case under review by the Supreme Court, a case currently pending in a federal district court in California challenges fair share fees. That case, *Yohn et al. v. California Teachers Association et al.* (C.D. Cal., Case No. 8:17-cv-00202-JLS-DFM), in which Lozano Smith represents several involved school districts, claims that these fees violate the First Amendment's individual speech rights. There was an unsuccessful attempt to fast-track *Yohn* to the Supreme Court to be considered with the *Janus* case. Thus, while the *Yohn* case is still pending, it is possible that the ruling in *Janus* will be dispositive of the major issues.

The Supreme Court's agreement to review the *Janus* case does not impose any

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new obligations on public employers with respect to mandatory fair share fees. Rather, existing collective bargaining agreement provisions on fair share fees will remain in effect until a decision is issued by the Court.

Lozano Smith will be watching this case closely and will provide updates as they become available. For more information on the *Janus* case or on union dues in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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