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JANUS V. AFSCME

THIRD ATTEMPT BY CORPORATE BIGWIGS IS NOT ABOUT FIRST AMENDMENT RIGHTS BUT DISMANTLING LABOR

By Marci Rosenblum, Local 1180 Communications Director

The Supreme Court of the United States (SCOTUS) began hearing arguments on February 26 in the most-talked-about case involving labor since two years ago when eight of the nine current judges traveled this same road hearing oral arguments about whether unions can charge a fee to non-members in order to cover the costs of representing them.

In fact, the Supreme Court has actually heard several similar cases attempting to overturn the initial 1977 case of Abood v. Detroit Board of Education that said government employees who do not belong to a union can be required to a pay a fee — often known as a "fair share" or "agency" fee — to cover the union's costs to negotiate a contract that applies to all public employees, including those who are not union members. That decision has come under fire in recent years in a series of cases (Harris v. Quinn and Friedrichs v. California Teachers Association) asking the court to overrule Abood, and hold that requiring an unwilling employee to pay even this more-limited fee violates First Amendment rights.

The first attempt failed when the Court ruled that the employees in that case, home health aides, were not actually public employees. The second attempt also failed when Justice Antonin Scalia suddenly passed away before a decision could be announced and the eight remaining Justices were deadlocked 4-4.

After roughly an hour of sometimes cantankerous debate in the courtroom in this year's attempt to undermine unions, it appears as though the outcome basically rests on the vote of the court's newest justice, Neil Gorsuch, who reportedly kept a poker face and remained perfectly silent while the other justices asked questions.

This case pits the National Right to Work Legal Defense Foundation (NRWLDF) that actually financed the lawsuit for Mark Janus, against AFSCME. Also on the side of Janus was the U.S. Justice Department, which prior to President Trump's election supported labor, but has now done an about face.

The oral argument went as predicted. According to SCOTUSblog.com, "the justices made it clear from the beginning of the NRWLDF's attorney's argument that they were sticking to positions that they were presumed to hold in the tied Friedrichs case. Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan defended agency fees and zeroed in on the effects of a reversal of Abood on labor peace, the settled relationships of unions and employers in the public sector, and the reliance factor built into labor contracts with fair share fee requirements agreed upon by the parties. Chief Justice John Roberts and Justices Anthony Kennedy and Samuel Alito leaned clearly toward overruling Abood. Justice Kennedy, when listening to the argument of AFSCME attorney David C. Frederick sharply criticized the Abood underpinnings. He questioned Frederick whether if the union lost, it would have 'less political influence.' When Frederick responded, yes, Justice Kennedy declared, 'Isn't that the end of this case?'"

The more liberal justices focused on what many have referred to as the "ripple effects" from a ruling that favors Janus. Justice Ginsburg told attorney William Messenger, who argued on Janus' behalf, that a decision abolishing the agency fees would take away resources from public-sector unions, resulting in less efficient collective bargaining.

Justice Breyer questioned why overturning Abood was even an option as it could open the door to the Supreme Court being put in a position of revisiting other old cases. "Should the court go all the way back to Marbury v. Madison, the landmark 1803 case that established the principle that federal courts have the power to review acts by Congress and the president?" he asked. And Justice Kagan seemed to agree when she questioned overturning Abood because so many states and unions have relied it that decision for so long. If SCOTUS rules in favor of Janus, 23 states, and the District of Columbia and Puerto Rico, would all have laws overruled at once and thousands of municipalities would have their contracts with a reported 10 million employees invalidated.

But this case is really about more than just Mark Janus' right to not pay dues to a labor union. It's about right-wing, well-financed business groups and leaders looking for a way to finally put an end to the labor movement and take away all the rights and guarantees that workers receive because of unions.

"This case is nothing more than a political attack that aims to further rig our economy and democracy against working people. It's an attempt to divide us and limit our power in numbers because unions give workers

a powerful voice in speaking up for themselves, their families and their communities," said Local 1180 President Gloria Middleton.

Union representation is beneficial for both employees and employers. Unions are effective voices for promoting the day-to-day concerns of employees in the bargaining unit, including wages, health and safety, paid sick days, and health-care benefits. Collective bargaining also provides public-sector employers with an effective tool for managing the workplace. In the 1960s and 1970s, states throughout the country saw significant labor unrest, including strikes by public employees that disrupted the delivery of public services. "This is not a time we want to return to," Middleton said. "Unions serve a purpose. We are here to give a unified voice to individual workers who would not be able to stand up to their employers without the strength of numbers behind them."

The Janus case isn't just an attack on union workers; it's an attack on the freedom of all working people to come together to improve their lives, their workplaces, and their communities. The billionaires behind this case want to divide working people and limit their power in numbers because they want to weaken labor's ability to win for their families. Justice Scalia's death in 2016 only briefly slowed the march of corporate interests that have sought for years to protect their huge profits and kill off the last remnants of organized labor in America.

Corporate CEOs and the politicians who do their bidding have spent millions of dollars rigging the economy and the democratic process against working people, leaving the freedoms of the middle class at stake. "Unions are the best way to level the playing field for working people, and that's why we have been under attack for so many years," Middleton said. "We must hold our elected officials accountable to do what is right for working people and this country. Middle-class families are working more than ever before. It takes two incomes to provide even the basic support for a family, yet we are still struggling to get by. Unions are the backbone of support for working people, by raising wages and increasing access to health care and retirement security, especially for women and people of color who are disproportionately hurt by the system."

A recent editorial in the New York Times, which came out on the side of labor, said the following: "Justice Alito referred to fair-share fees as 'compelled speech' that infringes on a worker's 'dignity and conscience.' But the true goal of this litigation strategy has never been to protect workers' speech rights; it is, as Justice Sonia Sotomayor rightly said, 'to do away with unions.'"

Agency fees are an integral part of keeping the labor movement alive. Negotiating complex agreements can be time-consuming and expensive. Agency fees not only help unions pay for the costs associated with bargaining, but guarantee the employer that the union will have a secure source of funds to get the job done. Agency fees distribute the costs of the system in a way that is fair: since all employees receive the benefits of union representation, all employees are expected to pay a share of the costs.