

...Supreme Court delivers blow to union movement

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Reactions to the decision were widespread and fierce, starting with the Court's own minority. Justice Elena Kagan said in *Janus*, the court's majority is "weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy."

The ruling is "politics, not law," said Alice O'Brien, top lawyer for the National Education Association. "Rather than precedent or principle, what appears to drive the *Janus* majority is barely concealed animus toward public sector unions and their advocacy."

"This is not just an attack on public-sector workers," said IBEW International President Lonnie Stephenson. "It is an attack on every single American



The *Janus v. AFSCME* case gets its name from Illinois child support specialist Mark Janus, a union objector represented by AFSCME Council 31. But it's a fitting name for the case for another reason: Janus was the Roman god of beginnings and transitions, always depicted as having two faces, one looking at the past and one looking at the future.

who works for a living, and it is only the first step in an effort to repeal every right won by working people in this country."

U.S. Sen. Jeff Merkley (D-Oregon) called the *Janus* deci-

sion a huge blow to working America—masterminded by the privileged and powerful. "Last year, the powerful few completed the theft of a Supreme Court seat," Merkley said. "Now, as planned, they are reaping the rewards with a decision designed to cripple workers' ability to come together to insist on a fair shake."

Impact

The *Janus* decision will reduce the income of unions representing an estimated 5 million state and local government workers in 22 states plus the District of Columbia and Puerto Rico. In those places, workers who choose not to become union members have been paying fair share fees that typically amount to 80 percent of full union dues; now they'll pay nothing. The other 28 states had no provision

for mandatory union fees.

Public employee unions could see the *Janus* decision was coming, and have had time to get ready by reaching out to represented workers to communicate why becoming a union member is important.

But the public employee unions also have a new adversary. Groups like the Freedom Foundation — financed by a small group of billionaire-supported foundations — paid for the *Janus* lawsuit, and now are trying to capitalize on it by appealing directly to union-represented public employees to drop out of their unions.

On the day the *Janus* ruling was announced, the Freedom Foundation said it sent emails to more than 90,000 public employees, which it said resulted in 800 workers completing opt-out forms in the first 24 hours. The

group also said it was immediately deploying 80 people in Washington, Oregon, and California to canvass public employees outside their workplaces.

Several states with pro-union governors or legislatures have taken action to shield public employees from anti-union propaganda or otherwise soften the blow of *Janus*. Oregon Gov. Kate Brown ordered state agencies that receive public records requests for large amounts of information about public employees to contact the governor's office before making the information public. In California, a new law keeps public employee phone numbers and email addresses private. And in California and New Jersey, new laws guarantee that unions have the right to meet with newly hired public employees.

Not our opinion: The dissenting minority speaks

Below is an excerpt of the fiery dissenting opinion Obama appointee Elena Kagan wrote on behalf of the four Supreme Court justices who opposed the majority in *Janus v. AFSCME*.

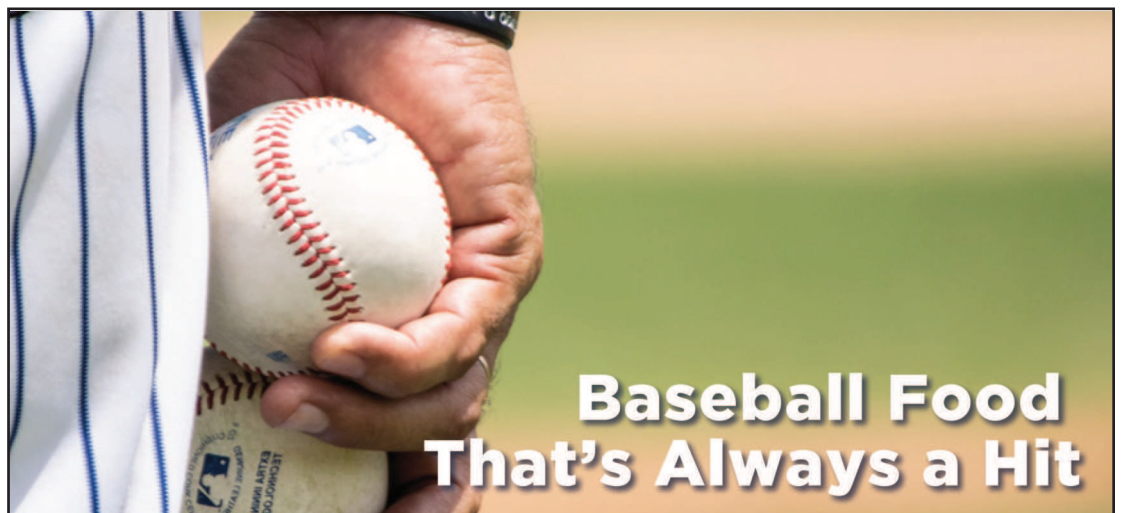


There is no sugarcoating today's opinion. The majority overthrows a decision entrenched in this nation's law, and in its economic life, for over 40 years. As a result, it prevents the American people, acting through their state and local officials, from making important choices about workplace governance. And it does so by weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy. ...

The majority has overruled *Abood* ... because it wanted to pick the winning side in what should be—and until now, has been—an energetic policy debate. Some state and local governments (and the constituents they serve) think that stable unions promote healthy labor relations and thereby improve the provision of services to the public. Other state and local governments (and their constituents) think, to the contrary, that strong unions impose excessive costs and impair those services. Americans have debated the pros and cons for many decades—in

large part, by deciding whether to use fair-share arrangements. Yesterday, 22 States were on one side, 28 on the other (ignoring a couple of in-betweeners). Today, that healthy—that democratic—debate ends. The majority has adjudged who should prevail.

And maybe most alarming, the majority has chosen the winners by turning the First Amendment into a sword, and using it against workaday economic and regulatory policy. Today is not the first time the Court has wielded the First Amendment in such an aggressive way.... And it threatens not to be the last. Speech is everywhere—a part of every human activity (employment, health care, securities trading, you name it). For that reason, almost all economic and regulatory policy affects or touches speech. So the majority's road runs long. And at every stop are black-robed rulers overriding citizens' choices. The First Amendment was meant for better things. It was meant not to undermine but to protect democratic governance—including over the role of public-sector unions.



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