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Janus v. AFSCME, Council 31: An Unprecedented Blow to Public Sector Unions?

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JANUS V. AFSCME, COUNCIL 31: AN UNPRECEDENTED BLOW TO PUBLIC SECTOR UNIONS?

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Abstract: In June of 2018, the Supreme Court of the United States handed down a shocking opinion that sent waves through labor law and the public sector. After forty-one years of state and local labor law policy being structured around the precedent set by *Abood vs. Detroit Board of Education* (c. 1977), the Supreme Court overturned the right of public sector unions to enter into agency-shop agreements, which otherwise necessitates the payment of fees to the union regardless of union membership. In this article, I will first briefly discuss the facts of *Janus*, both parties' contentions, and the reasoning behind the opinions of both the conservative majority and the liberal minority. I will then argue that *Janus* was incorrectly decided under the well-established doctrine of *stare decisis* and that the practical implications of the majority's decision run counter to the spirit of public sector labor rights.

Background and Facts of the Case

The primary question at issue in *Janus v. AFSCME* is whether it is unconstitutional under the First and Fourteenth Amendments to require non-members of public sector unions to pay agency fees as a condition of employment. Agency fees are similar to generic union dues, but, since they are being paid by non-union employees, they are only a fraction of what union members pay. In the case of the Illinois Department of Healthcare and Family Services, where plaintiff Mark Janus was employed, the agency fees were only seventy-six percent of what union members paid in dues, adding up to about five hundred and thirty dollars each year as a condition of his continued employment[1]. The usage of these agency fees by the union is statutorily restricted to omit political and ideological purposes—under the Illinois Public Labor Relations Act, these funds may only be

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[1] *Janus v. AFSCME, Council 31,* 138 S. Ct. 2448 (2018), 5.

used for "the collective bargaining process, contract administration[,] and pursuing matters affecting wages, hours[,] and conditions of employment."[2] Additionally, it is required for the union to distribute a "Hudson notice" to non-members each year, which serves as an account of what the agency fees were ultimately spent on. Despite this, the continuation of these agency shop agreements in the public sector has remained controversial for decades.

Before examining the facts of *Janus*, it is important to first examine the precedent that was under review in the *Janus* decision— the 1977 *Abood v. Detroit Board of Education* decision. In 1977, several public school teachers in Detroit filed actions in Michigan State Court alleging that the collection of agency fees from union non-members to be used in collective bargaining and political activities was a violation of their First and Fourteenth Amendment rights to freedom of speech and association[3]. The Supreme Court ruled in this case that it is acceptable for agency fees to be collected from non-members because the benefits to preserving labor peace and preventing free riders from benefiting from collective bargaining outweighs the First Amendment concerns of these agency shop requirements. The Court ruled that as long as the fees are used solely for the purposes of "collective bargaining, contract administration, and grievance adjustment," then these agreements do not sufficiently infringe upon freedom of speech and association to warrant an objection from the courts[4]. Unions would continue to be prohibited from spending agency fees on political and ideological activities, such as supporting campaigns or legislation, and therefore, in the view of the Court, these fees did not qualify as coercive political association.

Janus v. AFSCME was brought forward in 2018 as a challenge to the long-standing *Abood* decision. Originally introduced by Illinois Governor Bruce Rauner, the case alleged that agency

[2] 5 ILCS 315, *Illinois Public Labor Relations Act* (1983). Section 5(a).
[3] *Abood v. Detroit Board of Education,* 431 US 209 (1977).
[4] *Abood*.

shop agreements were inherently associationally coercive, and therefore infringe upon First Amendment rights. However, the original iteration of this case as brought by the Governor was dismissed by both the district court and the Seventh Circuit Court of Appeals because the governor did not have standing[5]. Mark Janus, a non-union employee of the Illinois Department of Healthcare and Family Services, stepped into the existing case filed by the State of Illinois alleging that the collection of agency fees posed a direct injury to him and his First Amendment rights. Janus' iteration of this case was eventually granted certiorari by the Supreme Court in 2018[6].

Janus was staunchly opposed to joining the union at his workplace— not just for political and ideological reasons, but because he also deeply disagreed with the positions taken by the union in collective bargaining activities[7]. This disagreement posed deep issues for the precedent set by *Abood* because, while non-members could not be forced to subsidize political or ideological activities, their agency fees were going almost entirely to collective bargaining efforts. The safeguards put in place by *Abood* to circumvent the possible coercion of public employees to pay for political activities were not enough in the case of Mark Janus because he was principally opposed to the union itself. Janus was also able to establish standing by arguing that he suffered a direct injury as a result of the agency shop laws in Illinois, showing that his fees cost him about five hundred and thirty dollars annually[8]. In the amended complaint put forth by Janus and his attorneys, the claim was that "nonmember fee deductions are coerced political speech" and that "the First Amendment forbids coercing any money from the nonmembers"[9].

[5] "Janus v. American Federation of State, County, and Municipal Employees, Council 31," *Oyez.* Accessed April 14, 2021. https://www.oyez.org/cases/2017/16-1466.
[6] *Janus v. AFSCME, Council 31,* 138 S. Ct. 2448 (2018), 1.
[7] *Janus*, 1.
[8] *Janus,* 5.
[9] *Janus*, 5

Petitioner's Contentions

Mark Janus filed his suit against the American Federation of State, County, and Municipal Employees (AFSCME) because he contended that requiring the payment of agency fees from non-union government employees is a coercive violation of the First Amendment right to freedom of speech. The central claim, as stated above, was that "all 'nonmember fee deductions are coerced political speech' and that 'the First Amendment forbids coercing any money from the nonmembers.'"[10] The argument was that the standard set in *Abood v. Detroit Board of Education* did not go far enough in protecting public sector employees from violations of their rights to freedom of speech. Under the precedent created by the *Abood* decision, unions were prohibited from using agency fees from non-members to subsidize political and ideological activities that fall outside of the scope of collective bargaining. However, Janus argued that since he did not agree with the activities of the union within the collective bargaining sphere, he should not be required to subsidize these activities either. Additionally, he rejected the notion that agency fees are important to circumvent the "free rider" problem. In the complaint, it was stated that "petitioner strenuously objects to this free-rider label. He argues that he is not a free rider on a bus headed for a destination that he wishes to reach, but is more like a person shanghaied for an unwanted voyage."[11]

The contention here is that, since government employees work under contracts that are paid for by taxpayers, collective bargaining activities fall under the umbrella of substantial public and political concern, and therefore the requirement of agency fees is a way of forcing non-members to tacitly endorse a political standpoint. The decision of a public sector union to demand higher wages, for example, could have a substantial impact on how the state spends public money and the

[10] *Janus*, 5.
[11] *Janus*, 13.

quality of public services. Since the government is both the employer *and* a political actor that spends public money, Janus argued that it is very difficult to separate the bargaining activities of the union from political and ideological statements. To elucidate this point further, it is helpful to look at examples of this argument in practice. At the time the case was brought, the state of Illinois had over $160 billion in unfunded pension and retiree healthcare liabilities that were owed to public sector employees[12]. In collective bargaining, the union may ask for additional benefits, which would grow this sum and place additional burdens on taxpayers and the government. Essentially, Janus contends that collective bargaining with a public employer is the same as lobbying the government and that these activities have effects that reverberate beyond just employees.

Another example provided by the petitioner to illustrate how public sector union bargaining activities are inherently political relates to the influence of teachers' unions in particular. In union activities, teachers' unions inevitably address questions of education policy— for example, they hash out the specifics of how teacher and student success is measured, whether that be through standardized testing or other means, or questions of how many students should be in a classroom for optimized learning experiences. Additionally, collective bargaining can address the hot-button issues surrounding school curriculum— it can include or exclude topics such as comprehensive sex education, evolution, or even climate change[13]. These examples highlight the manner in which Janus and his attorneys argued that union activities, even those that are permitted to use agency fees under *Abood,* are inextricable from the larger political context of public concern.

Finally, the petitioner made the argument that the AFSCME Local Council 31 was not complying with the restriction on political and ideological activities established by the *Abood*

[12] *Janus*, 28.
[13] *Janus*, 30.

decision. In the complaint, it was stated that "the nonmembers were told that they had to pay for '[l]obbying,' '[s]ocial and recreational activities,' 'advertising,' '[m]embership meetings and conventions' and 'litigation,' as well as other unspecified '[s]ervices' that 'may ultimately inure to the benefit of the members of the local bargaining unit."[14] Although the majority of these activities are not explicitly political or ideological in nature, they are seemingly a far cry from the strict use of agency fees for collective bargaining activities, further adding fuel to Janus' argument that the payment of non-member agency fees is a coercive requirement that frivolously violates the First Amendment rights of public sector employees.

Respondent's Contentions

The respondent in this case is the American Federation of State, County, and Municipal Employees (AFSCME), a public sector union that represents state and local government employees across the country. The crux of the respondent's argument is that the *Abood* decision is an adequate balance between the rights of individual employees to free speech and the rights of unions to collectively bargain with the government on behalf of all employees, not just union members. The government, in their view, should be allowed to fulfill its role as an employer in making basic employment decisions. The tricky part of this case is conceptualizing the role of the government as both a political actor and an employer of unionized employees, and the AFSCME contends that the nature of the government as an employer outweighs the potential for political statement and that the rights of employees to bargain with the government as an employer should be protected under the conditions of *Abood*. The AFSCME contends that the government does in

[14] *Janus*, 4.

fact have the right, in its role as an employer, to restrict freedom of expression among its employees[15].

Legally, as the sole and exclusive bargaining representative of employees, public sector unions are required to represent both union members and non-members in collective bargaining activities. The primary question, as stated by the attorney for the AFSCME, is: "Do states, as part of our sovereign system, have the authority and the prerogative to set up a collective bargaining system in which they mandate that the union is going to represent minority interests on pain of being subject to any fair labor practice?"[16] Since the union is required to fairly represent all employees, even those who do not choose to join the union directly, the requirement of fair-share payments from non-union employees is an equitable way to make sure the union has the resources to bargain on behalf of these employees. Since non-members are still benefiting from the collective bargaining agreements negotiated by the union, it would be equitable to ask for agency fees.

They also contend that, in addition to agency fees being broadly important to union functioning, the majority of the activities that agency fees go to fund are apolitical in the first place and do not constitute a violation of the First Amendment. These listed benefits conferred by collective bargaining consist primarily of "wages, benefits, working conditions, promotions, safety equipment, grievance procedures, holidays, grooming standards, meal periods, and the like."[17] The AFSCME says that characterizing these bargaining agreements as overtly political is inaccurate, and the infringement on the First Amendment rights of employees is practically negligible. The standard that was set by *Abood,* from the perspective of the respondent, was a functional

[15] *Janus v. AFSCME, Council 31,* 138 S. Ct. 2448 (2018), *Oral Arguments*, February 26, 2018, 57.
[16] *Janus, Oral Arguments* (2018), 54-5.
[17] Moshe Marvitt, "The Legal Arguments of *Janus v. AFSCME,* Explained," *The Century Foundation,* February 15, 2018, https://tcf.org/content/commentary/legal-arguments-janus-v-afscme-explained/.

compromise between the rights of the union and the government to fill their roles as employee and employer and the right to freedom of expression.

Majority Decision: Overturning *Abood*

Justice Samuel Alito authored the 5-4 majority decision in this case in favor of overruling the *Abood v. Detroit Board of Education* decision from forty years prior. The argument made by Justice Alito in his majority opinion is threefold— agency fees are a coercive violation of the First Amendment, agency fees are not necessary to the protection of labor peace and functioning, and the *Abood* decision was incorrectly decided. Each component of this argument is important to the majority decision as a whole.

First, Alito argues that agency fees are an unjustified violation of the First and Fourteenth Amendment rights to freedom of speech and association. The majority decision begins with the following statement: "We conclude that this arrangement violates the free speech rights of non-members by compelling them to subsidize private speech on matters of substantial public concern."[18] The question of whether collective bargaining activities by public sector unions constitute matters of substantial public concern is one of the key considerations in deciding this case, and the majority ultimately ruled that the argument made by the petitioner was correct; since the government is one of the actors in a collective bargaining negotiation, the public interest is also a stakeholder in these negotiations. This, in the view of the majority, constitutes public and political speech that is inextricable from the key activities of a union.

Second, the majority dismisses the claim that upholding the 1977 *Abood* decision is key to maintaining labor peace in the public sector. The worry was that the absence of agency fees that financially tied all employees to a singular union would lead to the promulgation of several

[18] *Janus v. AFSCME, Council 31,* 138 S. Ct. 2448 (2018), 1.

competing unions. With many different organizations speaking on behalf of the employees, this could result in labor unrest and chaos,. However, according to Alito's decision, the payment of agency fees and the right of the union to exclusive representation of the employees are not necessarily mutually exclusive. The majority points to the observation that, even without the collection of agency fees, public sector unions will still have the exclusive right to represent the employees in their workplace. On the federal level, where agency fees are not required of federal employees who elect not to join the union, exclusive representation is still upheld, and there is no turmoil with regards to labor peace[19]. Therefore, the majority did not see the concerns about labor peace as a sufficient reason to avoid overturning the *Abood* decision.

Finally, the majority contends that the *Abood* decision was incorrectly decided in the first place, so it would not be a violation of the stare decisis principle to overturn it. Alito writes that the *Abood* decision constitutes an outlier in contemporary First Amendment jurisprudence. In a non-union context, Alito argues, the requirement that people subsidize speech and expressions that they disagree with would be a blatant violation of the First Amendment, and this is proven by the overwhelming majority of other First Amendment decisions that have taken place since *Abood.* After listing a variety of other First Amendment cases that are more in line with the *Janus* decision than with *Abood,* Alito states, "We have held time and again that freedom of speech 'includes both the right to speak freely and the right to refrain from speaking at all.'"[20] According to the majority, *Abood* was poorly reasoned, leading to practical problems and abuse of employees' constitutional rights by unions; therefore, violating stare decisis by overruling *Abood* was justified. The majority took into consideration the impact of agency fees on employees' constitutional rights, the ability

[19] *Janus*, 12.
[20] *Janus,* 8.

of unions to peacefully function, and the legitimacy of the precedent, and ultimately acted to overrule *Abood v. Detroit Board of Education.*

Dissenting Opinion: Protecting Labor Peace

Justice Elena Kagan authored the dissenting opinion in this case, speaking on behalf of herself and Justices Sotomayor, Ginsburg, and Breyer. Justice Kagan's argument on behalf of the *Abood* precedent and the AFSCME rests primarily on the principle of stare decisis and the practical implications of the decision on the operations of state-level government employers and employees. The belief of the minority on the court was that the *Abood* decision struck a stable and fair balance between allowing employees to exercise their First Amendment rights and the right of the government to act as an employer, and the justification for overturning this well-established precedent was simply too weak.

The minority believed that the right of the government to act as an employer in bargaining with public sector unions is an important right and must necessarily be balanced with the rights of employees to exercise free speech. In the private sector, it is commonplace for employers to regulate the free speech and expression of employees— whether that be through dress codes, workplace rules, or union shop agreements— and in order for the government to act as a legitimate employer, this right is similarly important to protect. In line with this argument, Justice Kagan states that "The Court's decisions have long made plain that government entities have substantial latitude to regulate their employees' speech—especially about terms of employment—in the interest of operating their workplaces effectively."[21] In its previous managerial role under the *Abood* decision, the government was able to effectively balance its role as an employer and its role as a protector of constitutional rights, and the *Janus* decision upsets this well-established balance.

[21] *Janus,* 1.

Additionally, the disruption of precedent in this decision clearly would have practical impacts on the operations of the public sector on the state and local levels. Since *Abood* was so deeply entrenched in the constitutional and statutory landscape, Kagan expressed concern about the impacts on existing laws and contracts. She notes that over twenty states had statutes relating to public sector unions that were built around the *Abood* standard and that the *Abood* standard informed hundreds of existing contracts that applied to millions of public sector workers[22]. In addition, the reverberating financial impacts of banning agency shop agreements in the public sector were destined to be massive. Kagan is concerned that, "Public employee unions will lose a secure source of financial support. State and local governments that thought fair-share provisions furthered their interests will need to find new ways of managing their workforces. Across the country, the relationships of public employees and employers will alter in both predictable and wholly unexpected ways."[23] By allowing free riders to damage the financial salience of unions, the dissenting justices were particularly worried that labor peace would be disrupted and competing unions may emerge. The worry that the unexpected *Janus* decision would be a stunning breach of precedent, leading to instability and unintended consequences, provides a compelling reason to uphold an entrenched and functional forty-year-old standard.

Analysis

The *Janus v. AFSCME* decision is obviously a controversial one— the court was sharply divided on the case, as are many legal scholars. I contend that the court did not do justice in deciding this case, that the majority was incorrect in overturning *Abood v. Detroit Board of Education*, and that he reasoning behind opposing this precedent was an inadequate justification. The practical implications of any Supreme Court decision are crucial to consider, and the majority

[22] *Janus,* 2.
[23] *Janus,* 2.

issued a sweeping opinion that practically devastates public sector unions and destabilizes the crucial principle of stare decisis.

First, the Court did not have sufficient justification to go against stare decisis principles in deciding this case. Traditionally, the threshold for overturning an established precedent is relatively high. Stare decisis is a well-established doctrine that promotes uniformity in decision-making, making it central to the legitimacy and stability of the judiciary system. There are several practical reasons for upholding stare decisis. According to James Tilghman of the New York Law School Law Review, "The doctrine remains functionally desirable because it promotes stability, protects settled expectations, conserves judicial resources, and adds predictability to the everyday affairs of citizens."[24] It is crucially important for people to be able to rely on the law as a stable entity, rather than a moving target that changes at the whims of an unelected court. This consideration is especially relevant when one considers that millions of public sector employees lived and worked under the *Abood* standard, without issue, for more than forty years, before it was upended suddenly.

Traditionally, the doctrine of stare decisis is more strictly applied to cases where there are statutes that rely on precedent because of the practicality of deferring to elected legislatures. Statutes and pieces of legislation are democratically crafted, deliberated upon, and passed, which is a direct contrast with Supreme Court decisions, which are handed down by a few unelected judges. In *Janus*, the original case was brought against the agency shop clauses in the Illinois Public Labor Relations Act, a statutory arrangement, not the *Abood* decision itself. Additionally, the statutory schemes of twenty-two states were crafted around the standing precedent that the *Janus* court overruled. Alito and the majority took it upon themselves, as unelected judges, to

[24] James Tilghman, "Restoring Stare Decisis in the Wake of *Janus v. AFSCME, Council 31,*" *New York Law School Law Review* 64, no. 2 (2019): 142.

intervene in statutory labor law on a massive scale, which has been normatively condemned in the past. In the 1991 *Hilton v. South Carolina Public Railway Commission* case, the majority wrote, "*Stare decisis* has added force when the legislature… and citizens… have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response."[25] The *Janus* decision accomplished what the *Hilton* court feared: it dislodged the expectations of millions of public sector employees and upended dozens of pieces of legislation. The destabilizing impact of the *Janus* decision on stare decisis and the legislative schemes of various states cannot be considered just. The court in *Janus* certainly erred in not applying stricter scrutiny to the question of whether overturning an established precedent and, consequently, various democratically-crafted statutes was appropriate.

Justice Alito's reasoning behind ignoring these statutory and legislative concerns is alarming. In his majority opinion, he writes that the upending of the legality of agency-shop agreements would not pose a shock to the extensive system of contracts and bargaining agreements because unions had been "on notice" for years that the overturning of *Abood* may be a possibility.[26] This is not a legitimate argument for violating stare decisis— just because relevant stakeholders may suspect a decision will be overturned, does not mean that the reliance interests will not be substantially implicated. It also has shocking implications once this statement is taken to its logical conclusion. Tilghman writes, "According to Alito, if individuals or entities should know—or are 'on notice'—that precedent has been questioned or is in jeopardy of being overturned, then they should not rely on the precedent."[27] Precedent should always be reliable as it forms the foundation of a functional legal system. Suggesting that people should ignore precedent in the face of an

[25] *Hilton v. South Carolina Public Railway Commission,* 502 US 197 (1991).
[26] *Janus v. AFSCME, Council 31,* 138 S. Ct. 2448 (2018), 45.
[27] Tilghman, "Restoring Stare Decisis," 145.

unstable judiciary is shocking. This dismissal of the material consequences of violating stare decisis implies that people should not rely on existing precedent if they are "on notice" about the possibility of it being overturned.

In addition to the importance of stare decisis to the predictability of law and the right of legislatures to make their own statutes based on stable legal principles, it is important to note that many legal scholars agree that wielding the doctrine in an inconsistent and seemingly random manner lends credence to the public perception and suspicion about the Supreme Court being overtly political and unprincipled. Legal scholars, let alone members of the public, have their suspicions about the motivations of the Supreme Court in this case. The weak reasoning of the Court with regards to stare decisis "begs the question of whether the Court was in favor of upholding constitutional protections or whether the Court was instead anti-union."[28] *Janus* is not solely to blame for the perception of the Supreme Court as a political institution, capable of reversing its rulings based on ideological leanings, but it certainly does not help ameliorate this perception either. "This is evidenced from the increased political jockeying involved in Supreme Court nominations. Political leaders of both parties understand that if they are able to get a justice on the Court who disagrees with prior jurisprudence, precedent will not be upheld."[29] The *Janus* decision served to further exacerbate the instability and political tint of the Supreme Court without a sufficient reason for deciding in the unseemly way it did.

Next, I will expand on why scholars believe that the justifications given by the court for violating stare decisis were insufficient. The majority's reason for overturning the agency-fee requirement was that the *Abood* decision was "unworkable." It is curious that a standard that had

[28] Johannah Pizzini, "Janus vs. American Federation of State, Country, and Municipal Employees: An Unprecedented Departure from Precedent," *Loyola Law Review* 62, no. 2 (Summer 2019): 500.
[29] Tilghman, "Restoring Stare Decisis," 143.

been well-established and practically successful for over forty years would suddenly be considered unworkable, but this is tangential to the point. The majority was unable to find an adequate bright line standard to differentiate between expenses that are chargeable and non-chargeable to non-union employees under the First Amendment, and they argued that the *Hudson* notices given to non-union members detailing the expenditures were too vague to be workable. However, the entire point of having precedent is to provide a stable basis upon which the courts can refine, develop, and clarify the law through subsequent decisions. Johannah Pizzini of Loyola University New Orleans School of Law argues, sensibly, that "If the main reason *Abood* was unworkable was the difficulties in distinguishing chargeable expenses from non-chargeable expenses, then why not expand the *Hudson* notice to include more details on each expenditure?"[30] There were other tools and options at the disposal of the Court that stopped short of completely overturning *Abood*, but the majority chose instead to exaggerate these workability concerns in order to justify an extreme and sweeping decision.

Finally, the *Janus* court was mistaken in its choice to ignore the reliance interests involved with the case in favor of overturning *Abood.* The vast majority of jurists say that reliance interests in contracts should be weighed by the Courts when overturning precedent is on the table.[31] Although "the Court would normally defer to precedent to protect the actors who relied on the then-existing law when negotiating and entering into contracts,"[32] the *Janus* Court took a highly unusual stance by completely ignoring the material interests of those operating under current contracts. The majority justified dismissing the impact of the decision on public sector unions by asserting that the prohibition of agency fees would not lead to the weakening of unions— they

[30] Pizzini, "An Unprecedented Departure from Precedent," 496.
[31] Tilghman, "Restoring Stare Decisis," 143-4.
[32] Tilghman, "Restoring Stare Decisis," 147.

contend that the right to exclusive representation over all employees is enough of a benefit to outweigh the cost of no longer being able to collect non-member fees. However, the Court severely misunderstood the free rider label and the collective action problem unions will face without the possibility of agency-fee requirements.

The theory surrounding public goods contends that people are rational economic actors. If employees suspect that they can reap the benefits of collective bargaining without paying union dues, they will rationally choose to save their money (even if they are strong supporters of the union!). This is empirically demonstrated in the case of Indiana teachers' unions. The teachers had the statutory right to decertify their union if membership dropped below fifty percent of all employees, and, although many districts had union membership as low as twelve percent, none of these local union chapters voted to decertify.[33] This is a good example of how, even if employees love the union that represents them and the benefits it confers, they may not choose to pay dues[34].

Without the allowance of agency shop agreements, unions will be prevented from effectively forming and functioning, and there will be far fewer meaningful collective goods for non-members to free ride on in the first place. Fisk and Malin write in the *California Law Review:* "The majority assumed that unions… will effectively negotiate collective benefits… They also assumed that fair share fees serve just one interest: preventing nonmembers from free-riding on the existing benefits. But if unions are unable to compel support, there will be no common benefits in the first place."[35] Studies have shown that the presence of agency shop agreements for state and local government employees are correlated with higher wages and union status, delivering tangible

[33] Catherine Fisk and Martin Malin, "After Janus," *California Law Review* 107, no. 6 (December 2019): 1830.
[34] It is also important to note that the Indiana teachers' unions were kept afloat by the agency fees paid by union employees in states without right-to-work laws.
[35] Fisk and Malin, "After Janus," 1828.

benefits for millions of workers.[36] Although there may be some employees, such as Mark Janus, who do not agree with the aims of the union and deliberately choose not to pay dues out of opposition, far more people will tacitly let their memberships expire in the belief that they will obtain these higher wages and better working conditions at no additional cost to them. When this free-rider mindset is allowed en masse, the unions' financial salience and ability to negotiate these collective goods quickly plummets. When conceptualizing the collective action problem, the Court asserted that the right to exclusive representation provided a significant enough advantage, while failing to consider that unions may no longer be able to even function as an exclusive representative. By failing to take into account the reliance interests that were previously protected by *Abood,* the Court failed to adequately do justice in this case.

Conclusion

After examining the facts and background of this case, the contentions of both Mark Janus and the AFSCME coupled with the arguments of both the majority and the dissenting justices, I contend that the Supreme Court did not do justice in *Janus v. AFSCME, Council 31*. Stare decisis is a well-respected and foundational part of the American legal landscape. Especially considering that dozens of democratically-constructed statutes were based on the overturned *Abood* decision, the Supreme Court needed an extremely compelling rationale for overturning an established forty-year precedent, and the majority simply did not adequately establish a solid reason. By eroding stare decisis in this stunning decision, the Court further fed the narrative that they are a politically-motivated institution. Finally, the Court erred in not taking into account the interests of the public-sector unions and employees that worked under contracts negotiated under *Abood.* The *Janus* decision runs the risk of dealing a devastating blow to public-sector unions and their ability to

[36] Fisk and Malin, "After Janus," 1829.

exercise exclusive representation for all employees, and the majority's overlooking of these practical concerns shows that the Court's decision was incomplete and unjust.

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