

Court's Decision for Teachers Could Impact the Entire Culture

It is difficult to overstate the importance of the Supreme Court's **ruling in *Janus v AFSCME***. The Court overruled over 40 years of established law based on their 1977 decision in *Abood v. Detroit Board of Education* which allowed public employee unions in the **22 agency shop states** to force non-members to pay them what are known as agency fees or fair share fees. The court, in the majority opinion written by Justice Alito, was quite direct in overruling this precedent, stating:

States and public-sector unions may no longer extract agency fees from nonconsenting employees. The First Amendment is violated when money is taken from nonconsenting employees for a public-sector union; employees must choose to support the union before anything is taken from them. Accordingly, neither an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. (Page 5)

The strength of the decision surprised many in that it clearly forbids unions from using "opt out" language, that would allow the union to withdraw fees from non-members unless the individual submitted a written statement that they that they did not wish to support the union. The decision rested on Thomas Jefferson's classic argument that, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical." (Page 9)

The Court majority dismissed the union argument that most of what they do has nothing to do with politics, making clear that, particularly in education, everything the union addresses is a matter of public policy covered by free speech protections:

"Take the example of education, which was the focus of briefing and argument in Friedrichs [Case supported by CEAI last year before justice Scalia passed away causing a tie vote]. The public importance of subsidized union speech is especially apparent in this field, since educators make up by far the largest category of state and local government employees, and education is typically the largest component of state and local government expenditures. Speech in this area also touches on fundamental questions of education policy. Should teacher pay be based on seniority, the better to retain experienced teachers? Or should schools adopt merit-pay systems to encourage teachers to get the best results out of their students? Should districts transfer more experienced teachers to the lower performing schools that may have the greatest need for their skills, or should those teachers be allowed to stay where they have put down roots? Should teachers be given tenure protection and, if so, under what conditions? On what grounds and pursuant to what procedures should teachers be subject to discipline or dismissal? How should teacher performance and student progress be measured— by standardized tests or other means?

Unions can also speak out in collective bargaining on controversial subjects such as climate change, the Confederacy, sexual orientation and gender identity, evolution, and minority religions. These are sensitive political topics, and they are undoubtedly matters of profound "value and concern to the public." We have often recognized that such speech "occupies the

highest rung of the hierarchy of First Amendment values” and merits “special protection.” (Pages 30-31).

The court was not persuaded that unions must have compulsory payments from employees to bargain and enforce a contract, but instead argued, based on the experience of unions in the 28 states that do not allow agency fees, that being elected as the *exclusive representative* for collective bargaining provides them with sufficient resources and power:

Even without agency fees, designation as the exclusive representative confers many benefits. As noted, that status gives the union a privileged place in negotiations over wages, benefits, and working conditions. Not only is the union given the exclusive right to speak for all the employees in collective bargaining, but the employer is required by state law to listen to and to bargain in good faith with only that union. Designation as exclusive representative thus “results in a tremendous increase in the power” of the union.... These benefits greatly outweigh any extra burden imposed by the duty of providing fair representation for nonmembers. (Pages 15)

It is anticipated that the Janus decision will result in at least a 10% drop in public employee union income—but this might be a good thing for them. The loss of compulsory fees could force the unions to be more responsive to all employees rather than just seeking to satisfy the simple majority needed to ratify a contract. This could lead to narrowing their focus to issues directly related to employment, instead of pursuing polarizing and divisive issues. In short, if each potential member exercises their new right to vote for or against the union with their wallet, the union is likely to work to satisfy more teachers with their actions.

Taking this one step further, more centrist unions could move the Democrat party, which is heavily influenced by the unions, toward a more moderate perspective which could in turn restrain the harsh political discourse of our day.

The hope that the Janus decision can begin to heal our divided nation might be a stretch. The unions may well decide that the best response to Janus is to become more strident and less centrist which could lead to further polarization of our political culture.

If Janus does lead to increased public dialog it will be up to those of us who feel compulsory union fees were not a good thing to be polite and constructive in discussions with union representatives. Even if they are not open to change and movement toward the center, we should heed Paul’s advice to the Philippians to, “Let your reasonableness be known to everyone” (Phil. 4:5).

Much good could come from the restoration of freedom of speech the Janus decision grants agency fee payers and many others who joined the union because they knew they would have to pay fees anyway. We are richly blessed us to live in a nation with so many freedoms and a Supreme Court that understands how important they are. Let’s praise God for these blessings and pray that we use them wisely.

CEAI is interested in your thoughts. We would like to know if how you feel about the Janus decision. Members are encouraged to enter additional thoughts and comments and below. Personal comments may be addressed to the author at JMitchell@ceai.org. John Mitchell is the Washington, DC Area Director for the Christian Educators Association.

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