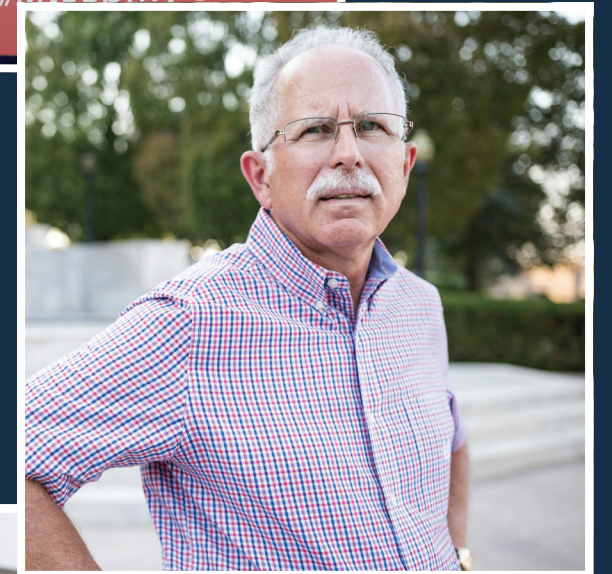


JANUS V. AFSCME
**ADVANCING
WORKER
FREEDOM**



LIBERTY JUSTICE CENTER

libertyjusticecenter.org | 190 S. LaSalle, Suite 1500, Chicago IL 60603 | 312.263.7668

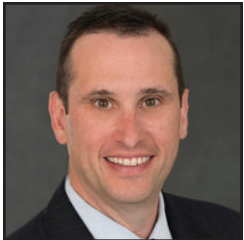
WHO WE ARE

The Liberty Justice Center exists to revitalize constitutional restraints on government power and to restore individual rights through strategic, precedent-setting litigation. We are a public-interest law firm that seeks to effect change through the courts. But our work extends far beyond the courtroom.

As one of the nation’s premier liberty-focused law firms, we view every case as an opportunity to educate the public about the Constitution and free-market principles. We shape and frame our work in a way that explains what is at stake to the public at large. We seek to win in court – as well as in the hearts of the American people.

The most recent and highest profile example of how we work is in the landmark U.S. Supreme Court case Janus v. AFSCME. This case challenges mandatory union fees paid by more than 5 million government workers in the 22 states without a right-to-work law. The Supreme Court heard oral arguments in this case on Feb. 26, 2018, and a decision is expected this summer.

OUR TEAM



Patrick Hughes
President



Diana Rickert
Vice President



Jacob Huebert
Director of Litigation



Jeffrey Schwab
Senior Attorney



James McQuaid
Staff Attorney



Laurel Abraham
Director of Development



Rebecca Friedrichs, an educator from California and lead plaintiff in the Supreme Court case *Friedrichs v. California Teachers Association*, speaks in support of Mark Janus at a rally outside the U.S. Supreme Court on Feb. 26, 2018.

ABOUT JANUS V. AFSCME

Imagine having to pay a middleman to work. Pay up — or find another job.

That's the reality for more than 5 million government workers in 22 states, including Illinois, Maine, New York and California. Teachers, child support specialists, prison workers, police, firefighters and other government employees are forced to pay money to highly political government unions in order to pursue careers in public service.

Why? Because governments in these states have granted public sector unions the power to exclusively represent and take money from these employees. These unions have the power to speak for and take money from government workers, regardless of whether these workers want union representation or support the unions' political and policy positions.

This is wrong, and it's a gross violation of government workers' First Amendment rights to freedom of speech and freedom of association.

That's what the Supreme Court case, *Janus v. AFSCME*, is about. It's time to restore workers' rights. Every government worker should be able to choose which organizations to support with his or her hard-earned money.

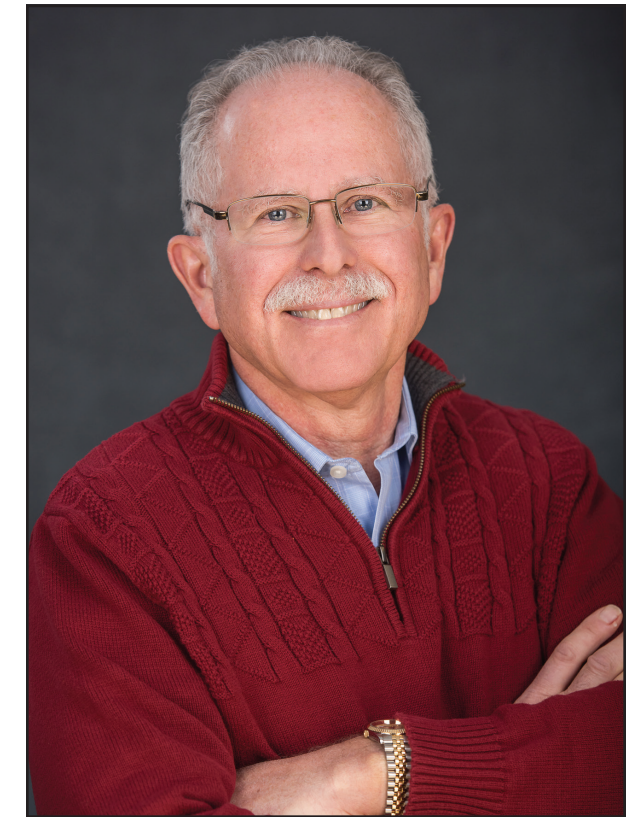
Janus v. AFSCME is the most important case for workers' rights in a generation. If the Liberty Justice Center is successful, workers' rights will be restored. Victory in *Janus v. AFSCME* will result in right-to-work protections for every government worker in America.

That is why our work on the Janus case is vital.

ABOUT MARK JANUS

My name is Mark Janus, and I am the plaintiff in the Supreme Court case *Janus v. AFSCME*. I joined this fight in 2015, and since that time the Liberty Justice Center and their co-counsel from the National Right to Work Legal Defense Foundation have stood by my side every step of the way. I'm so grateful for their backing in my case.

As a child support specialist for state government in Illinois, I work to ensure that children receive all the financial support available to them. I love my job; serving others is part of who I am. But in order to work in public service in Illinois, I am required to check my First Amendment rights at the door. That's right; to hold a job in state government, I must pay money every month to a government union. This is a tremendous overreach. That's why I first reached out to the Liberty Justice Center in 2015 — and why we've asked the U.S. Supreme Court to step in.



Over the years I've worked in the private sector and in government. In the 1980s, I worked in a government job and was not required to pay money to a union. Then I worked for a private company. When I returned to the public sector in 2007, the union automatically deducted money from my paycheck even though I was not a union member. That's when I learned that state government in Illinois had granted AFSCME — a politically powerful government union — the power to exclusively represent more than 90 percent of state workers in Illinois. The government gave AFSCME the power to collect money from almost every employee of state government, even if we didn't support the unions' politics and policies. I had no choice and no voice in the matter.

I am one of millions of American workers who are forced to support a government union as a condition of employment.

This injustice has been going on for decades — but thanks to your support and the work of the Liberty Justice Center, government workers like me may soon see our First Amendment rights restored. Thank you for all you are doing to advance the cause of worker freedom.

Mark Janus

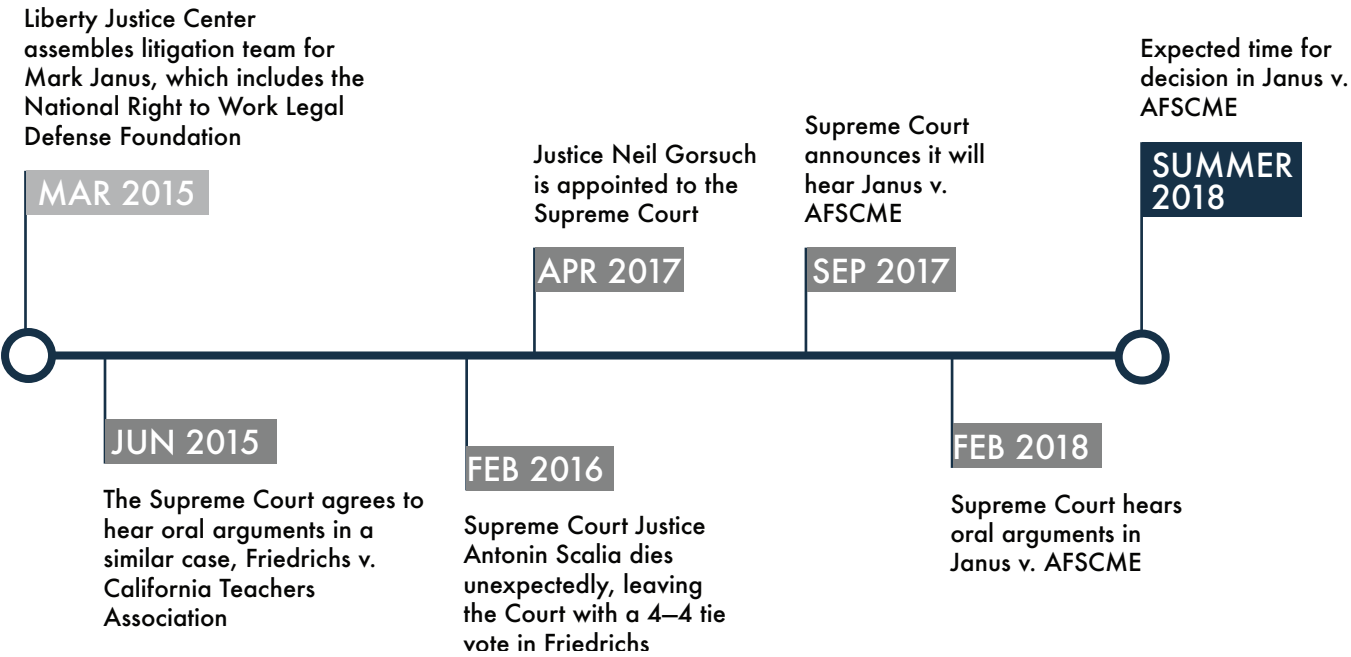
JOURNEY TO THE U.S. SUPREME COURT

The Liberty Justice Center began work on Janus v. AFSCME in 2015. We heard frequently from government workers who were frustrated that working in public service meant they were forced to give part of every paycheck to a government union, but many were afraid or reluctant to take on the unions. Then in spring 2015, we met a brave Illinoisan named Mark Janus.

Once Mark decided to pursue his case, we assembled a litigation team for him that included attorneys from both the Liberty Justice Center and the National Right to Work Legal Defense Foundation. A similar case, Friedrichs v. California Teachers Association, was making its way through the courts. Many believed the Friedrichs case would restore workers’ rights, but the unexpected death of Justice Antonin Scalia led to a 4–4 tie vote at the U.S. Supreme Court. Thankfully, Janus v. AFSCME was waiting in the wings – and the Supreme Court announced in September 2017 that it would hear our case.

Without the Liberty Justice Center, it could have been years before the Supreme Court would again consider the constitutionality of mandatory government union fees. Thanks to the foresight of the Liberty Justice Center and Mark Janus’s determination to pursue his case, millions of Americans could see their First Amendment rights restored and hard-earned money saved much sooner.

As a result of our work, dozens of free-market organizations from across the U.S. are preparing for the possibility of a world without mandatory public sector union fees as early as summer 2018. Think tanks and nonprofit organizations are planning educational campaigns to help government workers know and exercise their rights, and we are preparing for potential litigation that could follow a favorable ruling. None of this would have been possible without the Liberty Justice Center’s dogged pursuit of justice all the way to the Supreme Court.



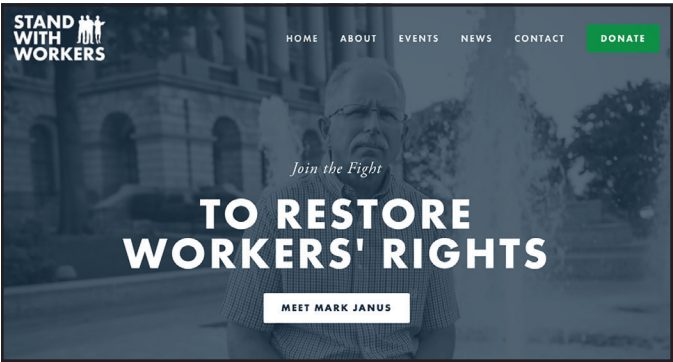
Aaron Benner, an educator from Minnesota, speaks in support of Mark Janus at a rally outside the U.S. Supreme Court on Feb. 26, 2018.

WINNING HEARTS AND MINDS

As litigators, we seek to win in the courts. But our organizational approach and philosophy is that we must also win in the court of public opinion. That’s why the Liberty Justice Center built a national marketing and media campaign around Janus v. AFSCME.

The Liberty Justice Center developed the brand “Stand with Workers” and the digital hub for the case StandWithWorkers.org. This branding was used across social media to communicate our main message: Workers deserve a voice and a choice when it comes to unions in their workplace.

The Stand With Workers branding was on full display outside the Supreme Court on the day of oral arguments. Supporters of Mark Janus rallied outside the court with signs and hats displaying the “Stand With Workers” branding – and these signs were featured prominently in broadcast and other news coverage of oral arguments.



Screenshot of StandWithWorkers.org.

The Liberty Justice Center also assembled a coalition of like-minded think tanks, litigation firms and advocacy groups to help amplify our message. We developed and disseminated messaging about our case that emphasized restoring workers’ rights and giving every government worker a choice and a voice in union matters. We worked collaboratively with our coalition partners to help maximize that message across all channels – media, digital and direct outreach.

TELLING A NATIONAL STORY

The Liberty Justice Center drove the media’s narrative around the constitutional issues of the Janus case to ensure that the American public — especially government workers — knew the truth. Our message was one of restoring workers’ rights, and empowering workers with a choice and a voice.

In the months leading up to the oral arguments, our team helped prepare for news interviews by leading rigorous media training sessions for Mark Janus and Jacob Huebert. We also traveled across the country for interviews and meetings with Supreme Court reporters and other journalists. The goal was to frame the case from the perspective of workers’ rights, and convey to government employees and the American people why this First Amendment case is so important.

We focused on top tier, legacy media outlets that would reach a broad swath of the American public. In the days before and after our day in court, the Liberty Justice Center team went from one interview to the next on a media blitz. These briefings were overwhelmingly successful. In the 24 hours surrounding oral arguments, the Liberty Justice Center’s work, attorneys and client Mark Janus were featured in nearly 1,000 news articles across the country.

As a result of our media outreach, Mark’s story was featured in virtually every major national news outlet. Mark appeared with his attorney Jacob Huebert on C-SPAN, Fox News Channel, in the New York Times, Bloomberg and USA Today — among other national news outlets.



Above: Mark Janus appears live, in-studio on Fox News @ Night with host Shannon Bream on the night of oral arguments. The Liberty Justice Center booked Mark for this appearance. This was one of several appearances on Fox News Channel. Director of Litigation Jacob Huebert also appeared in a news package on Fox News Channel in the week before the oral arguments. Mark and Jacob appeared together on Fox News Channel the morning after oral arguments on Fox & Friends, and the segment was broadcast multiple times throughout the week.



Above: Mark Janus briefs the national press following oral arguments at the U.S. Supreme Court on Feb. 26, 2018. At Mark’s right is Nina Totenberg, legal affairs correspondent for National Public Radio. At Mark’s left is Patrick Hughes, president of the Liberty Justice Center and Diana Rickert, vice president of the Liberty Justice Center.



The Liberty Justice Center booked Mark Janus and Jacob Huebert on the popular morning call-in interview program Washington Journal, which airs daily on C-SPAN. Mark and Jacob appeared live, in-studio on the morning of oral arguments.



Mark Janus and Jacob Huebert were interviewed by NBC News Justice Correspondent Pete Williams about the case in the days leading up to the oral arguments.



On Feb. 27, 2018, the day after oral arguments, Jacob Huebert debated an AFSCME leader live on the popular public affairs show Chicago Tonight on WTTW.

I'M FORCED TO PAY UNION FEES AS A GOVERNMENT EMPLOYEE AND I WANT OUT

By Mark Janus | Feb. 26, 2018

I work as a child support specialist for state government in Illinois. I enjoy my job and want to serve my state; public service is part of who I am. But I don't want to pay a union to do so.

That's why I've asked the U.S. Supreme Court to strike down the practice of forcing government workers to pay mandatory union fees. My case, *Janus v. AFSCME*, will be heard by the court on Feb. 26.

Every month, part of my paycheck goes to the American Federation of State, County and Municipal Employees. This is because long before I worked in this role, AFSCME was selected to represent the majority of state government employees in Illinois. When I was hired, no one asked me whether I wanted union representation. I only found out when the money started coming out of my paycheck.

My situation is not unique. AFSCME and other government unions forcibly collect union fees from more than 5 million government workers across the United States.

More than half of the states in the U.S. have laws protecting government employees from being forced to pay union fees in order to pursue their chosen professions, but Illinois is among almost two dozen states that do not.

AFSCME uses my monthly fees to promote an agenda I don't support.

It's no secret that Illinois' finances are in shambles, and AFSCME's lobbying arm has backed legislation that has bankrupted the state. It's political arm bankrolls politicians for whom I don't vote. And AFSCME uses its marketing prowess to provide cover for lawmakers who have allowed the state to rack up billions in unpaid bills.

The union says it is advocating for me, but here is how I see it: At a time when Illinois is drowning in red ink and does not have the money to deliver core services, such as caring for the poor and disadvantaged, the union is wrangling taxpayers for higher wages and pension benefits for state workers — benefits that Illinoisans cannot afford. The union's fight is not my fight.

AFSCME claims it's using my money to represent me in bargaining with the state, but I don't agree with what the union stands for, and I don't believe it is working

for the good of Illinois government. Given the choice, I wouldn't financially support the union, but for years I haven't had a choice. Let me out!

Across the country, public school teachers, police officers and other government workers face the same dilemma. Many of these people don't want to belong to a union, but they don't want to give up their jobs, either.

The Supreme Court upheld forced union fees in the 1977 case *Abood v. Detroit Board of Education*. However, over the years, a number of subsequent rulings have begun to question the reasoning and workability of *Abood*.

In the 2012 case *Knox v. SEIU*, the court held that union officials must obtain affirmative consent from workers before using union fees for political activities.

The 2014 ruling in *Harris v. Quinn* relieved home-based caregivers from paying forced fees to the Service Employees International Union.

I had hoped the court would grant freedom for state workers once and for all when it chose to hear *Friedrichs v. California Teachers Association* in 2015. Rebecca Friedrichs and eight other teachers in California argued that forced union fees for public sector workers violate the First Amendment. The court seemed prepared to rule in Friedrichs' favor. However, Justice Antonin Scalia's death just weeks before the case was to be decided left the remaining justices split 4-4. This issue remains unresolved, and it's time for the Supreme Court to settle it.

So on behalf of all government workers in the country, I am taking my case to the highest court in the land. I hope the court will restore First Amendment rights of free speech & free association to government employees by allowing them the freedom to choose whether they want to belong or pay money to a union at their workplaces. Let us out!

Mark Janus is plaintiff in the U.S. Supreme Court case, Janus v. AFSCME. He is being represented by the Liberty Justice Center and National Right to Work Legal Defense Foundation.

NO GOVERNMENT WORKER SHOULD BE FORCED TO PAY UNION DUES

By Jacob Huebert | Sept. 27, 2017

The U.S. Supreme Court is expected to announce this week whether it will hear a landmark labor case, *Janus v. AFSCME*.

At the heart of the case is this question: Should government workers be forced to pay money to a union as a condition of their employment?

Plaintiff Mark Janus is a child-support specialist at the Illinois Department of Healthcare and Family Services. He is suing because he believes workers deserve the right to decide for themselves whom to support financially. Opposing him is the most powerful government-worker union in Illinois, the American Federation of State, County and Municipal Employees Council 31. AFSCME says that if this is the job Janus wants to do, it is owed a cut of his paychecks.

Janus is caught in an unfair predicament, and he's not alone. It's estimated that at least 5.5 million government workers in 22 states are forced to pay money to unions just to keep their jobs.

"When I was hired by the state of Illinois, no one asked if I wanted a union to represent me," he says. "I only found out the union was involved when money for the union started coming out of my paychecks."

The First Amendment is on Janus's side.

But government-worker unions are hoping the Supreme Court will sidestep the Constitution to keep their current arrangement intact.

In an essay published four months ago, Naomi Walker, a former Obama administration associate deputy secretary of labor who now serves as the assistant to AFSCME's president, summed up the union's position:

"Right-to-work laws allow [for] union 'free riders,' or workers who refuse to pay union dues but still enjoy the wages, benefits and protections the union negotiates. Not only does this policy drain unions of resources to fight on behalf of workers, but having fewer dues-paying members also spells less clout at the bargaining table."

What's missing here is any acknowledgement that forcing people to support government-worker unions has for decades constituted one of the greatest workplace violations of First Amendment rights in U.S. history.

Some unions are going to extreme measures to ensure they can coerce government workers to fund their organizations, even if Janus prevails at the Supreme Court.

According to the Center of the American Experiment, the teachers union Education Minnesota recently asked its local union representatives to get all 86,000 teachers to sign a "membership renewal" form. By signing this form, a teacher would authorize the automatic deduction of union dues every year in perpetuity. That authorization could be revoked in writing, during one seven-day window each year.

Unions and the Left will no doubt put out an abundance of misinformation if this case progresses. So it's important to clarify what's really at stake: First Amendment rights. If he is successful, Janus could give every public-sector worker in the U.S. the ability to decide

for himself or herself whether to join and pay money to a workplace union. This does not mean that people who want to be in a union, want to accept the union's representation and want to support the union financially won't still be able to do so; they will, regardless of the case's outcome, because that is their First Amendment right.

If unions really deliver such great value and benefits, then, they should not fear a ruling in favor of Mark Janus. Every other group in American society has to convince people that it is worth supporting. There's no reason unions shouldn't have to make the same effort.

Jacob Huebert is Director of Litigation at the Liberty Justice Center, and an attorney for Mark Janus in the Supreme Court case Janus v. AFSCME.

JANUS V. AFSCME: SHOULD WORKERS HAVE TO PAY UNIONS TO KEEP THEIR JOBS?

By Jeffrey Schwab | Feb. 23, 2018

Should you have to pay a lobbyist just to keep your job? Of course not. But that’s the reality for 5 million government workers across the country — and at the heart of a case that will be heard by the U.S. Supreme Court this month: Janus v. AFSCME.

Mark Janus, a child support specialist in Illinois, is forced to give part of his paycheck to a government union, the American Federation of State, County and Municipal Employees, of which he is not a member, as a condition of working for the state. Not only is Mark forced to pay a government union that advocates policies and lobbies for legislation that he opposes, but he is also forced to pay for the union’s collective bargaining for contract provisions that he personally opposes.

Forty years ago, in a case called Abood v. Detroit Board of Education, the Supreme Court ruled that the First Amendment prohibited governments from forcing their workers to pay fees to a government union that went directly to political activities, but said that “labor peace” justified forcing such employees to pay for purportedly non-political costs, such as collective bargaining.

But Abood rests on a faulty assumption that it’s possible to distinguish between political and nonpolitical activities of a government union. Political activities don’t just consist of activities like endorsing a candidate or electioneering; political activities also include the pursuit of policy positions that the unions take and the way in which they use their position as workers’ exclusive representative to advocate for these policy positions in bargaining negotiations.

In reality, collective bargaining with governments, and government unions themselves, are inherently political.

Collective bargaining is a process of negotiation between the government and government unions by which the parties come to an agreement on employee compensation, benefits, and working conditions. We call people or groups that make demands on how governments should spend their money lobbyists. Government unions are lobbyists

for increased government spending, specifically spending on government employees.

Increased government spending must come from increased taxes or increased borrowing, which is eventually borne by taxpayers. As former National Education Association General Counsel Robert Chanin has acknowledged “tell me how I can possibly separate NEA’s collective bargaining efforts from politics — you just can’t. It’s all politics.”

“Should you have to pay a lobbyist just to keep your job? Of course not. But that’s the reality for 5 million government workers.”

Through collective bargaining, government unions lobby for a myriad of political objectives in addition to increased salaries and benefits for government employees.

For example, one organization of government unions called Bargaining for the Common Good promises to use collective bargaining to push for “progressive revenue solutions,” affordable housing, and universal pre-k.

On its website, this organization notes that two of its associated government unions — the Chicago Teachers Union and SEIU Health Care of Illinois-Indiana — pursued a “Progressive Revenue Platform” during collective bargaining that included “reducing exorbitant bank fees, recovering money from toxic swap deals, passing a progressive income tax, closing corporate tax loopholes,” and a “LaSalle Street tax on financial transactions in Chicago’s exchanges.”

Further, Bob Schoonover, President of SEIU Local 721 in Southern California, admitted that government unions influence matters beyond wages and benefits by, for example, advocating for single-payer health care, property tax reform, and increased school budgets.

Finally, the reaction of government unions to the possibility of losing Janus provides additional evidence of how government unions are innately political. If it was possible to separate political and nonpolitical activities of government unions, then a decision prohibiting unions from collecting “fair share” fees from non-members — which, remember, are only supposed to go to nonpolitical activities — should have no effect on government unions’

JANUS V. AFSCME: SHOULD WORKERS HAVE TO PAY UNIONS TO KEEP THEIR JOBS?

(continued)

political activities.

But Rob Weil, Director of Field Programs, Educational Issues for the American Federation of Teachers, recently lamented that, as a result of a Supreme Court decision prohibiting unions from collecting fees from nonmembers, the “progressive moment (sic) as a whole ... will lose resources ... which will lessen their impact.”

Government unions are by their very nature political. Perhaps you support the political goals and vision of government unions.

But imagine that in order to keep your job the government took money out of your paychecks and gave it to an organization that pursued political policies you do not support. That violates the First Amendment and that is why Mark Janus and other government employees should not be forced to subsidize government unions that they do not wish to join.

Schwab is a senior attorney at Liberty Justice Center, which is representing Mark Janus in the Supreme Court case Janus v. AFSCME.

PUBLIC UNIONS ARE VIOLATING WORKERS' CONSTITUTIONAL RIGHTS

By Jacob Huebert | Feb. 23, 2018

Can the government force its employees to pay money to a union just to keep their jobs? That's the question the Supreme Court will consider when it hears arguments in *Janus v. AFSCME* on February 26.

The plaintiff in the case is Mark Janus, a child-support specialist who works for the State of Illinois. He's one of some 5 million government workers in 22 states who are forced to give part of every paycheck to a union as a condition of their employment. His argument? Making workers like him pay these fees violates their First Amendment rights to free speech and association.

Opposing Mr. Janus are Illinois officials and the union he's forced to pay, the American Federation of State, County, and Municipal Employees (AFSCME). They argue that the Court should continue to follow a 1977 decision, *Abood v. Detroit Board of Education*, which deemed forced fees acceptable as long as they don't fund union political activities unrelated to collective bargaining on workers' behalf.

But the *Abood* decision has a fundamental flaw: It hasn't actually protected Mr. Janus and other public-sector workers like him from being forced to pay for unions' political speech.

One problem with *Abood* is that it left unions free to decide for themselves which activities non-members can and can't be charged for — unless and until someone holds them accountable. In practice, that means that non-members often pay for unions' advocacy on policy issues far removed from workplace concerns. Unions can get away with this because a worker who suspects a union is misusing his or her fees must go through costly arbitration or even litigation to challenge it — a heavy burden few are willing to bear to save a few dollars.

A recent Washington Post editorial suggested the Court could fix this problem without overruling *Abood* simply by imposing stricter rules on unions to better ensure that non-members only pay for union bargaining on their behalf and nothing more. (The Post's editorial board declined to meet with Mr. Janus or his attorneys, or to publish an opposing point of view.) But that won't suffice.

Why? Because *Abood* has a deeper defect that no mere tweaking can fix: Public-sector unions' core activity — representing workers in collective bargaining — is itself inherently political. When a union bargains with the

government, it tells the government how much it should spend on workers' salaries, what kind of benefits it should provide, and how it should run its programs. When anyone else does that, it is considered political speech — we call it lobbying.

So when a worker is forced to give money to a public-sector union to pay for collective bargaining, he or she is being made to pay for someone else's political speech — something the First Amendment virtually never allows. That means the only way to protect workers' First Amendment rights is to allow them to choose whether to pay union fees at all.

The Post editorial also argued that the Court should leave this issue to state and local governments because debates over the role and influence of public-sector unions are too partisan and political in nature. But that, too, misses the point.

The *Janus* case isn't about whether unions and the policies they support are good or bad; it's about whether forcing someone in a government job to give money to a union violates that individual's constitutional rights. And it's the Supreme Court's responsibility to strike down state and local laws when they violate First Amendment rights — regardless of the politics of the parties involved. What about the Post's argument that the Court should follow *Abood* because following precedents promotes “legal stability”? In fact, the Court often overturns past decisions when it determines that they've resulted in wide-scale violations of constitutional rights. A recent example is *Obergefell v. Hodges*, in which the Court overturned a 1972 precedent to strike down state bans on same-sex marriage, even though the case involved a controversial issue that had always been left up to state governments. As in many other cases, the Court concluded that constitutional rights must take priority.

The First Amendment is not and should not be a partisan issue; nor should a citizen's First Amendment rights be nullified simply to follow precedent for precedent's sake. The Supreme Court should overrule *Abood* and restore workers' right to choose which political advocacy groups they will and won't support with their money.

Jacob Huebert is Director of Litigation at the Liberty Justice Center, and is an attorney for Mark Janus in the Supreme Court case Janus v. AFSCME.

Bloomberg

LABOR'S REPRIEVE IS OVER AS U.S. SUPREME COURT CASE TARGETS FEES

By Greg Stohr | Feb. 21, 2018

Public-sector unions got a reprieve at the U.S. Supreme Court two years ago. Their time may be running out.

In 2016, the court appeared poised to let government workers who object to joining a union refuse to pay part of the cost of representation. Then Justice Antonin Scalia died unexpectedly, leaving those opposing mandatory fees one vote short of a majority.

The issue will be back at the Supreme Court in arguments Monday, and union advocates are bracing for the defeat many expected two years ago. With fellow conservative Justice Neil Gorsuch now in Scalia's seat, the court again could be ready to rule that the First Amendment lets public-sector workers opt out. The case could affect 5 million workers in about two dozen states that allow public workers to be required to pay fees.

“This case is the most important case for workers' rights in a generation,” said Jacob Huebert, one of the lawyers representing Illinois child-support specialist Mark Janus, who is challenging the fees. “You shouldn't have to check that First Amendment right at the door when you take a government job.”

The clash is as much about the value of unions as it is about constitutional rights. Union leaders say the ultimate goal of those pressing the case is to undermine the clout of the labor movement.

The case “is about power,” said Randi Weingarten, president of the 1.7-million member American Federation of Teachers. “They're attacking us because we fight for a better life for working folks, and they see that fight as a threat to their political and economic power.”

For the nine justices, the case is also about the power of legal precedent. They are considering overturning a 1977 ruling that said states can let public-sector unions demand so-called agency fees from non-members, as long as the money covers representational work like collective bargaining and not ideological or political activities like lobbying.

That 1977 ruling, known as *Abood v. Detroit Board of Education*, said agency fees could promote “labor peace” by buttressing a union's status as the exclusive representative of a workforce. The court said making the fees optional would let employees become “free

riders” who benefit from collective bargaining without paying for it.

Right-to-work groups contend that the *Abood* ruling relies on a false distinction between lobbying and collective bargaining. Backed by the Trump administration, those advocates say public-sector unions are engaging in political speech when they negotiate with the government. And the groups say workers have a constitutional right not to associate themselves with that speech.

Contract Negotiations

Janus, a 65-year-old child support specialist who works in Springfield, says he disagreed with the positions his union -- the American Federation of State, County and Municipal Employees, Council 31 -- took during 2015 contract negotiations with the state.

“The state has billions with a ‘b’ in unpaid bills,” he said in an interview. “They've got a hundred billion with a ‘b’ in unfunded pension liabilities. And AFSCME is trying to negotiate for more wages and benefits to the tune of another 3 billion, and they were willing to go on strike for it. And I just couldn't support that.”

Janus was one of three employees who took over a lawsuit filed against the union by Illinois' Republican governor, Bruce Rauner.

A judge said Rauner didn't have the legal right to challenge the Illinois law, leaving the employees to press ahead. A federal appeals court eventually ruled against Janus, saying *Abood* remained valid law. Illinois Attorney General Lisa Madigan, a Democrat, is defending the state law alongside the union...

The case is *Janus v. American Federation of State, County and Municipal Employees, Council 31*, 16-1466.

Greg Stohr is a Supreme Court reporter for Bloomberg News.

A SUPREME COURT SHOWDOWN COULD SHRINK UNIONS' POWER

By Adam Liptak | Feb. 22, 2018

CHESTER, Ill. — Randy Clover is something of an anomaly — the president of a union local here that represents Illinois state employees, and a Republican precinct leader who voted for President Trump. But he has no doubt about what will be at stake next week at the Supreme Court: the financial and political clout of one of organized labor’s last strongholds.

The court will hear arguments on Monday about whether the government employees represented by Mr. Clover’s union, the American Federation of State, County and Municipal Employees, must pay the union a fee for representing them in collective bargaining. Conservative groups, supported by the Trump administration, say the First Amendment bars forcing government workers from having to pay anything, and the court has sent strong signals that it agrees with that argument.

If it does, unions like Mr. Clover’s stand to lose fees not only from workers who object to the positions they take in negotiations but also from anyone who chooses not to join a union but benefits from its efforts. To hear Mr. Clover tell it, the case is the culmination of a decades-long assault against the labor movement.

“The case was started by the governor to destroy unions,” Mr. Clover said, referring to Gov. Bruce Rauner, a Republican who has been at war with Illinois’s public-sector unions. “It’s trying to diminish the protections that unions have for their members.”

A ruling against public unions is unlikely to have a direct impact on unionized employees of private businesses, because the First Amendment restricts government action and not private conduct. But unions now represent only 6.5 percent of private sector employees, down from the upper teens in the early 1980s, and most of the labor movement’s strength these days is in the public sector.

Groups financed by conservative donors have worked hard to weaken public unions, and denying them the ability to impose mandatory fees on workers has been a long-sought goal. The argument almost succeeded in 2016, when the Supreme Court seemed poised to rule that the fees were unconstitutional.

But Justice Antonin Scalia died not long after the earlier case was argued, and it ended in a 4-to-4 deadlock. The

new case, which had been filed in 2015, was waiting in the wings and soon reached the Supreme Court. By the time the justices agreed to hear it, Mr. Rauner’s claims had been dismissed, and the case is now being pursued by Mark Janus, a child support specialist for the State of Illinois.

The Supreme Court is back to full strength with Mr. Trump’s appointment of Justice Neil M. Gorsuch, and most observers believe the new justice will join the court’s other conservatives to deliver a decision that will hurt public unions.

Mr. Janus’s lawyers said the case is about freedom of speech and association. The activities of public unions are akin to lobbying, they said, and so are by their nature political. Forcing unwilling workers to pay for such activities violates the First Amendment, they added, by compelling them to support messages with which they disagree.

“We argue that you shouldn’t have to check your First Amendment rights at the door when you take a government job,” said Jacob H. Huebert, a lawyer with Liberty Justice Center, a conservative litigation group.

Mr. Clover and Mr. Janus are both represented by Council 31 of the union. But Mr. Janus, who works at the Illinois Department of Healthcare and Family Services in Springfield, objects to paying what the union calls “fair share fees” and others call “agency fees.”

“I was forced to pay these fees,” Mr. Janus said. “Nobody asked me.”

He added that he disagrees with stances taken by the union. “They use that money in these agency fees to support their different causes and views,” he said.

Two of the biggest employers here in Chester are run by the state, and together they employ about 1,400 union workers. Mr. Clover, a blunt and burly 54-year-old who works at a state mental health facility, represents more than 400 of them. Another thousand or so work at a state prison.

If the Supreme Court rules against his union, Mr. Clover said, its finances would suffer and its influence would drop. In time, he said, his members’

A SUPREME COURT SHOWDOWN COULD SHRINK UNIONS' POWER

(continued)

incomes would fall, and local businesses would suffer.

“It probably would devastate this place right here,” he said, gesturing toward the buffet line at Reids’ Harvest House, a homey restaurant that serves filling meals.

More than 20 states let public unions charge nonmembers fees for work on their behalf. But unions can survive without the fees, Solicitor General Noel J. Francisco wrote in a brief for the Trump administration. “Despite the absence of agency fees, nearly a million federal employees — more than 27 percent of the federal work force — are union members,” Mr. Francisco wrote.

Mr. Clover, a Republican precinct committeeman in nearby Kinkaid Township, voted for Mr. Trump and said he was puzzled by the administration’s position in the case, which he believes is aimed at undermining his union’s effectiveness. “The union’s leadership tries to better the workplace for men and women trying to do their jobs,” he said. “But, unfortunately, I’ve seen the attack of the richer people trying to control everything.”

To decide against the union, the Supreme Court will have to overrule a 40-year-old precedent, *Abood v. Detroit Board of Education*. The decision drew a distinction between forced payments for a union’s purely political activities, which it held were forbidden by the First Amendment, and ones for more conventional union work, like bargaining, contract administration and representation of workers in grievance proceedings.

“To compel employees financially to support their collective-bargaining representative has an impact upon their First Amendment interests,” Justice Potter Stewart wrote for the majority. But, he wrote, “such interference as exists is constitutionally justified” to ensure “labor peace” and to thwart “free riders.”

In more recent decisions, the Supreme Court has twice suggested that the line drawn in the *Abood* decision is flawed and that the First Amendment bars the compelled payments for any activity by public unions.

“Because a public-sector union takes many positions

during collective bargaining that have powerful political and civic consequences,” Justice Samuel A. Alito Jr. wrote for the majority in 2012 in one of the cases, “the compulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights.”

Lawyers for the union have urged the Supreme Court to reaffirm the *Abood* decision and to bar “free riders.” But Mr. Janus’s lawyers said that phrase had things backward. “An accurate term,” they wrote in a Supreme Court brief, “would be ‘forced riders,’ as nonmembers are being forced by the government to travel with a mandatory union advocate to policy destinations they may not wish to reach.”

Mr. Clover said his union had done invaluable work, notably in ensuring workers’ safety. He gave an example from his workplace, a maximum-security facility that houses mentally ill people caught up in the criminal justice system.

“The only thing we have is our hands to protect ourselves,” he said, “and we have handcuffs we can put on an individual if they are so out of control you cannot control them without somebody facing injury.”

When the state tried to ban the use of handcuffs to transport patients, Mr. Clover said, “the union went to battle for us.” The handcuffs stayed.

Mr. Janus’s lawyers said that those kinds of negotiations amount to lobbying on questions of public policy and that unwilling workers should not be made to subsidize it.

“Mark Janus and at least five million people in 22 states like him are forced to pay union fees out of every paycheck as a condition of their employment,” Mr. Huebert said. “That’s a violation of their First Amendment rights of freedom of speech and freedom of association.”

Adam Liptak is the Supreme Court correspondent for The New York Times.

ANTI-UNION CHALLENGERS ARE ON THE VERGE OF VICTORY AT SUPREME COURT

By Richard Wolf | Feb. 8, 2018

WASHINGTON — Dianne Knox describes herself as “a child of the ‘60s.” Pam Harris grew up a butcher’s daughter in a proud union household. Rebecca Friedrichs was secretary of her local teachers’ union. Mark Janus supports the rights of workers to organize.

But as the lead plaintiffs in four successive Supreme Court cases challenging the power of public employee unions, Knox, Harris, Friedrichs and Janus take pride in helping conservative groups reach a tipping point in their decade-long, anti-union campaign.

What Knox in 2012, Harris in 2014, Friedrichs in 2016 and Janus in 2018 have done is put the justices within one vote of overruling a 40-year-old precedent that allows the unions to collect fees from non-members for the cost of representation. In a case that will be heard this month, the court appears to have that additional vote in the form of Justice Neil Gorsuch.

A 5-4 decision against the unions would free about 5 million government workers, teachers, police and firefighters, and others in 22 states from being forced to pay “fair share” fees — a potentially staggering blow to public employee unions.

The challengers’ battles against the Service Employees International Union, the National Education Association, the American Federation of Teachers and the American Federation of State, County and Municipal Workers are based on disagreements with the political and policy priorities of the national leadership.

“This is not my father’s or my grandfather’s union,” says Harris, recalling the Amalgamated Meat Cutters to which they belonged. “This is a money-making scheme. It is a way to advance political agendas.”

Union leaders see the opposite — a power grab by what they call corporate billionaires and right-wing special interests to cripple the unions standing in their way.

“It is a defunding strategy,” Randi Weingarten, president of the American Federation of Teachers, said at a press conference with other union leaders Wednesday. “They want the economy to be further rigged in their favor.”

It’s no coincidence that the four cases have emerged from California and Illinois, states with strong public

employee unions and strained state budgets. They are among 22 states without so-called “right-to-work” laws, which make union membership and contributions voluntary.

Already in the 22 states, workers do not have to contribute to the unions’ political activities. A ruling by the Supreme Court that they do not have to contribute anything at all could save objecting workers \$1,000 or more annually — at a huge cost to unions.

“The point is, who decides whether the union is worthy of their support — the workers themselves or the state on their behalf?” says Jacob Huebert, director of litigation at the Liberty Justice Center, which is representing Janus. “The First Amendment should be a non-partisan issue.”

From Knox’s relatively lonely effort in 2012 to Janus’ potentially landmark case this year, the legal fight has gained adherents on both sides. Only three friend-of-the-court briefs were filed at the Supreme Court in 2012. The number grew to 17 in 2014, 48 in 2016 and 67 this year.

Two early victories

Knox’s beef with the unions dates to 2005, when the SEIU established a “Political Fight-Back Fund” to oppose an effort by then-governor Arnold Schwarzenegger to reduce the clout of California’s public employee unions. Even non-members were expected to contribute.

“I’m sure in a lot of places, they do good,” Knox says. “But I don’t think we should be required as a condition of employment to pay for a union.”

Seven workers, with Knox in the leading role, sought help from the National Right to Work Foundation. They eventually won a 7-2 verdict from the Supreme Court in 2012; Justice Samuel Alito said the union didn’t inform workers of their right to refuse payment.

“My little case,” says Knox, now 70 and retired in Sacramento, “opened the door for these other cases.”

Harris — not your typical union-buster — was next. She met her husband at a Democratic fundraiser for former Chicago mayor Richard M. Daley. But she registered as a Republican during her legal fight against Illinois’ effort to unionize home-care workers.

ANTI-UNION CHALLENGERS ARE ON THE VERGE OF VICTORY AT SUPREME COURT

(continued)

At 59, Harris spends her days caring for her 29-year-old son Josh, who has a rare physical and cognitive disability called Rubinstein-Taybi syndrome. She is paid out of her son’s Medicaid waiver, which is slightly more than \$2,000 a month.

“My employer is not the state. My employer is Josh,” Harris says. “The union had no business taking our sons’ and daughters’ Medicaid dollars.”

The Supreme Court sided with her in 2014, ruling 5-4 that home care workers paid by Medicaid rather than the state should not have to contribute to the local union. But the justices limited their ruling to Harris and other home care workers, leaving intact the unions’ right to collect fees from most non-members.

In his majority opinion, Alito cited the “bedrock principle that, except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support.” His words signaled that the court’s majority might be willing to go further in a subsequent case.

A tie vote’s aftermath

That case came two years later, courtesy of Friedrichs, an elementary school teacher in Anaheim, Calif. She says she grew disenchanted with the California Teachers Association when it refused to let teachers in her school district consider a pay cut to avoid layoffs.

“I actually love unions. I love the local association,” says Friedrichs, 52. On the other hand, she says, “the state and national level are completely tone-deaf. They’re out of touch with us. They could care less what we really want.”

Her challenge looked like a sure winner during oral arguments in January 2016. “Everything that is collectively bargained with the government is within the political sphere, almost by definition,” Justice Antonin Scalia said.

But a month later, Scalia died, leaving the court deadlocked and only able to let a lower court verdict against Friedrichs stand. The unions had dodged a third bullet.

The current case grew out of that near-miss and returned the dispute from California to Illinois, where Janus works as a child support specialist.

Like his predecessors, the 65-year-old claims no malice toward unions. But he says their pay and benefit demands have helped put Illinois in dire financial straits, with the lowest credit rating in the nation.

“I don’t oppose the right of workers to organize,” Janus says. “But it ought to be up to the workers to make that decision. ... All I’m trying to do is level the playing field and let the worker decide whether they want to join.”

Two years ago, Janus waited in freezing weather outside the Supreme Court to hear the oral argument in Friedrichs’ case. Now Friedrichs plans to return the favor.

“If we do win, I’m going to help restore workers’ rights in this country,” Janus says. “I’m very proud to be a part of that.”

Richard Wolf is a Supreme Court correspondent for USA Today.

SUPREME COURT TO HEAR CASE ON UNIONS, NON-MEMBER FINANCIAL REQUIREMENTS

By Ariane de Vogue | Feb. 25, 2018

The Supreme Court will wade into a clash between organized labor and conservative groups Monday in a case that could overturn decades-old precedent and deal a potentially crippling blow to public sector unions.

The case is one of the most contentious in a pivotal term, and protesters from both sides are expected to flood the Court Monday morning.

At the center of the debate is a 1977 Supreme Court opinion known as *Abood v. Detroit Board of Education* that says while non-members of public sector unions cannot be required to pay fees for a union's political activities, they can be required to pay so-called "fair share" fees pertaining to issues such as employee grievances, physical safety and training.

The *Abood* decision was a careful compromise when it came down 41 years ago, but in recent years, some conservative members of the Supreme Court have publicly questioned whether it should be overturned.

Today, 22 states have laws on the books that allow broad fair share fees for public employees.

All eyes on Gorsuch

At the arguments, all eyes will be on Justice Neil Gorsuch. Back in 2016, the justices heard a similar challenge and seemed poised to overturn *Abood*, but then Justice Antonin Scalia died after oral arguments and the court announced a 4-4 split. Now Gorsuch's vote could be critical.

The case is brought by Mark Janus, an Illinois public sector employee. He says that because he is a government employee, issues germane to collective bargaining are inherently political. He argues that the First Amendment protects him from having to support such political expression.

He is represented by groups such as the National Right to Work Legal Defense Foundation and the Liberty Justice Center who argue that approximately 5 million public sector employees are required -- as a condition of their employment -- to "subsidize the speech of a third party that they may not support, namely the government-appointed exclusive representative."

Jacob H. Huebert, one of Janus' lawyers, says his client

specifically does not support the union's advocacy for increased spending, especially given Illinois' current fiscal condition.

"A lot of people in the private sector in Illinois are struggling with an increased tax burden and a stagnant economy and Mark Janus doesn't think it's fair to put more demands on his neighbors at a time like this," said Huebert.

Trump officials: First Amendment at stake

The Trump administration is supporting Janus in the case, changing course from the Obama administration in the 2016 case. "The government's previous briefs gave insufficient weight to the First Amendment interest of public employees in declining to fund speech on contested matters of public policy," wrote Solicitor General Noel J. Francisco.

But Lee Saunders, president of the American Federation of State, County and Municipal Employees believes that the case boils down to corporate interests attacking the rights of workers.

"When working people are able to join strong unions, they have the strength in numbers they need to fight for the freedoms they deserve, like access to quality health care, retirement security and time off to work for a loved one," he said in a statement.

The unions point out that they are required by law to represent all employees regardless if they are members, and that no one is required to join the union. They say that if non-members don't have any obligation to pay fair share fees for the collective bargaining obligations, they would become "free riders," benefitting from the representation without sharing the costs. In addition, the coffers of public sector unions would suffer if non-members were able to get services for free.

They say the 40-year-old Supreme Court decision has left the decision in the hands of the states to decide how to proceed.

Some on the right siding with unions

It's an argument supported by some Republican state lawmakers who have filed a brief supporting the unions

SUPREME COURT TO HEAR CASE ON UNIONS, NON-MEMBER FINANCIAL REQUIREMENTS

(continued)

and arguing the decision should be left to the states.

"As things stand, states can determine for themselves which rules work best for their work force and their communities, the court should not use the First Amendment to impose a single rule across the country that harms the ability of public sector workers to bargain together as unions," said Elizabeth Wydra, President of the Constitutional Accountability Center who represents the lawmakers.

Twenty states and the District of Columbia support the unions, but lawyers for 19 other states have filed briefs on behalf of Janus.

Those states agree with arguments made by business groups who are aiming to strike a blow at the financial structure that supports public sector unions.

Lawyers for the National Federation of Independent Business, for example, argue that the issues unions advocate for are "unfavorable" to small businesses.

"Public employee unions have become powerful in many states, shutting out other voices like the voice of small businesses who cannot afford more costly regulations or higher taxes," Karen Harned, the group's executive director said.

Ariane de Vogue is a Supreme Court reporter for CNN.



SUPREME COURT SET FOR HISTORIC NEW TERM

By Lydia Wheeler | Oct. 2, 2017

The Supreme Court is beginning a new term on Monday with a blockbuster docket of cases touching on civil rights, free speech, presidential power, redistricting and privacy rights.

The court has agreed to hear 43 cases so far, including a challenge to mandatory union fees in the public sector. The justices are likely to take up even more cases on Monday.

But court watchers may never get to hear arguments in two of the most closely watched cases of the term.

The court canceled arguments scheduled for Oct. 10 in two cases challenging President Trump's travel ban after the White House issued new, targeted restrictions on travelers from eight countries.

The justices have asked the parties in the travel ban case to submit additional briefs on how the new order impacts the current cases before the court. Arguments could be rescheduled, but what the court will decide to do remains unclear.

Aside from the cases, the term could be memorable for other reasons.

It will be Justice Neil Gorsuch's first full term on the bench. He joined the court in April after a bitter, partisan battle over the vacancy left by the late Justice Antonin Scalia.

Court watchers also say this term could be Justice Anthony Kennedy's last. Long the court's pivotal swing voter, Kennedy was rumored to have been considering retirement last spring.

"There's only one prediction that's entirely safe about the upcoming term," Justice Ruth Bader Ginsburg said recently while speaking at Georgetown Law School, "and that is it will be momentous."

Here's a look at the top cases to watch...

Janus v. American Federation of State, County and Municipal Employees, Council 31

The justices are revisiting an issue it grappled with last term, when it had only eight justices: whether public sector employees can be forced to pay union fees.

The court deadlocked 4-4 in *Friedrichs v. California Teachers Association* in March, affirming a lower court

ruling that upheld a California law requiring some public-sector workers to pay union fees.

This case before the court now centers on Mark Janus, a child support specialist for the state of Illinois who has been forced to pay money to the American Federation of State, County and Municipal Employees Council 31. He says that union has contributed to the fiscal and economic problems of his state with its unreasonable demands.

"Our case was already in the pipeline when the court considered *Freidrichs*. ... Now it's in a position to take up this issue again and actually reach a decision because now there are nine members and there shouldn't be a tie," said Jacob Huebert, an attorney with the Liberty Justice Center.

Huebert argues that government workers at every level should be able to choose whether they give their money to a union.

The union, however, claims it has 40 years of Supreme Court precedent on its side. It argues the court has consistently affirmed its 1977 ruling in *Abood v. Detroit Board of Education*, holding that employees may be required to pay their share of collective-bargaining activities, since all employees benefit from the outcome.

Lydia Wheeler is a legal and regulatory affairs reporter for The Hill.

The entire team at the Liberty Justice Center is energized by the groundswell of support behind our work in the Janus case. But the battle is far from over. If the Supreme Court rules in our favor this summer, that decision marks only the beginning of our work in the long fight to restore workers' rights.

Government unions are already preparing for a possible loss. They have launched a multifaceted, well-financed misinformation campaign to distort the narrative around worker freedom. Government unions are preparing to make it as difficult as possible for workers to stop paying union fees in the event of a successful Janus ruling.

That is where our work at the Liberty Justice Center continues, and why your partnership is vital.

We are prepared to offer litigation services to workers across the nation who face barriers to exercising their constitutional rights. To support these forward-thinking efforts, contact Laurel Abraham at the Liberty Justice Center: labraham@libertyjusticecenter.org or 815-830-4811.

Thank you for your continued support.