



A Union of Professionals

Protecting Our Voice: Legal Measures and Legislative Strategies to Prepare for Janus

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Agenda

- *Very, very* quick overview of the *Janus* case
- Fighting Back: AFT's brief
- Timeline for a decision
- Fighting Forward: Steps to prepare for a decision.
- Legislation in the States
 - States with Proactive Legislation
 - Types of Legislation
 - Exclusive Representation and Duty of Fair Rep.
- Your questions



Janus v. AFSCME Council 31



- At issue: our right to collect agency fees/fair share fees.
- Our right wing opponents want to overturn *Abod* decision.
- 4-4 split in *Friedrichs*

Janus v. AFSCME Council 31

- They argue (with no record) that agency fees violate the First Amendment.
- We argue that *Abood* was rightly decided: fair share fees are *fair to all*.
- Briefs:
 - www.scotusblog.com
 - Search: Janus
 - Choose top link



AFT's Brief

No. 16-1466

IN THE
Supreme Court of the United States

MARK JANUS,

Petitioner,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND
MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL.,

Respondents.

On a Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit

**BRIEF OF AMERICAN FEDERATION OF
TEACHERS AS *AMICUS CURIAE* IN SUPPORT
OF RESPONDENTS**

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- Your union is fighting back through the filing of an *amicus* brief.
- Kevin Russell of Goldstein & Russell (Scotusblog Firm)



Timeline



- ✓ **Cert. Petition **Granted** on Sept. 28, 2017.**
- ✓ NRTW Opening Brief due November 11, 2017
- ✓ AFSCME's Brief in Response due December 13, 2017
- ✓ Amicus Briefs due December 20, 2017
- ✓ Reply Brief due One Week Before Oral Argument
- ✓ Oral Arguments Scheduled for February 26, 2018
- **Decision Issued as Soon as April 15th. Definitely Before the End of the Court Term on June 30th, 2018**

AFT All In!

- Tremendous resource: aftallin.org
- 10 Point Legal Checklist for Confronting Janus
- Cards
- Contract language
- Much, much more



A Union of Professionals

A 10-Point Legal Checklist and Action Plan to Prepare for the Loss of Fair Share

1. Diligently maintain member lists and contact data.

- Proactively and constantly maintain highly accurate member/fee-payer lists with broad contact information (home, cell, email, Facebook, Twitter, work site, work schedule/location, etc.).
- Establish uniform member data-collection process and mechanics (with digital interfacing where available).
- Conduct internal authorization card (or list) status audit.
- Obtain and track cellphone sign-up (cell and text robo reach-out) in compliance with Telephone Consumer Protection Act.

2. Evaluate card language and sign-up process.

- Ensure authorization cards/digital sign-up language and process meet best practices and applicable laws for your setting (including labor law, privacy, bank routing and COPE issues).
- Analyze and carefully evaluate maintenance of benefits language (or alternatives).
- Obtain legal review of legally compliant electronic/digital and telephonic member sign-up process.
- Train staff on sign-up legal issues and narratives.
- Establish efficient record-keeping system and digital interface.

3. Take appropriate employer/CBA actions.

- Evaluate the possibility of a pre-decision reach-out to employer.
- Ensure that collective bargaining agreements (MOUs, procedures, practices, manuals) contain the most effective language regarding: member lists, data transfer and updates,

widest scope of member data, direct union access to employer database, sign-up processing timeline, expedited information on new hires, quitting process and timeline, access to and appearances at key employer activities, orientation, training and conferences, access to work sites/mailboxes/email, unit meeting and break-time access, union notification and rep insertion at important mentoring/promotion/evaluation/ due process points, etc. Where there is a common employer, consider working with the other unions on common bargaining demands.

Secure provision or understanding to address potentially intrusive disclosure of employee information to third parties and ensure the union receives timely notification of such disclosure.

Establish a well-delineated agency-fee termination escrow contingency plan (with the employer carrying the obligation to withhold and refund any overpayments arising post-decision).

4. Establish administrative process for agency-fee termination and funds handling.

- Select key point person(s) with clear assignments regarding agency-fee inquiries, quit processes, forms/templates, communications, reporting, funds handling and refunds.
- Train staff on the process and chain of authority.
- Establish employer point person(s) and interface process.

5. Urgently dispatch agency-fee funds post-adverse decision.

- Escrow and segregate agency-fee funds.
- Direct employer to cease deducting and sending agency fees.
- Return these funds to employer with record-keeping and transmittal backup.

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Fighting Forward: Preparing for *Janus*

1. Diligently maintain member lists and contact data.
2. Evaluate card language and sign-up process.
3. Take appropriate employer/CBA actions.



Fighting Forward: Preparing for *Janus*

4. Establish administrative process for agency-fee termination and funds handling.
5. Urgently dispatch agency-fee funds post-adverse decision.
6. Utilize a uniform and well-disciplined post-decision communications plan.

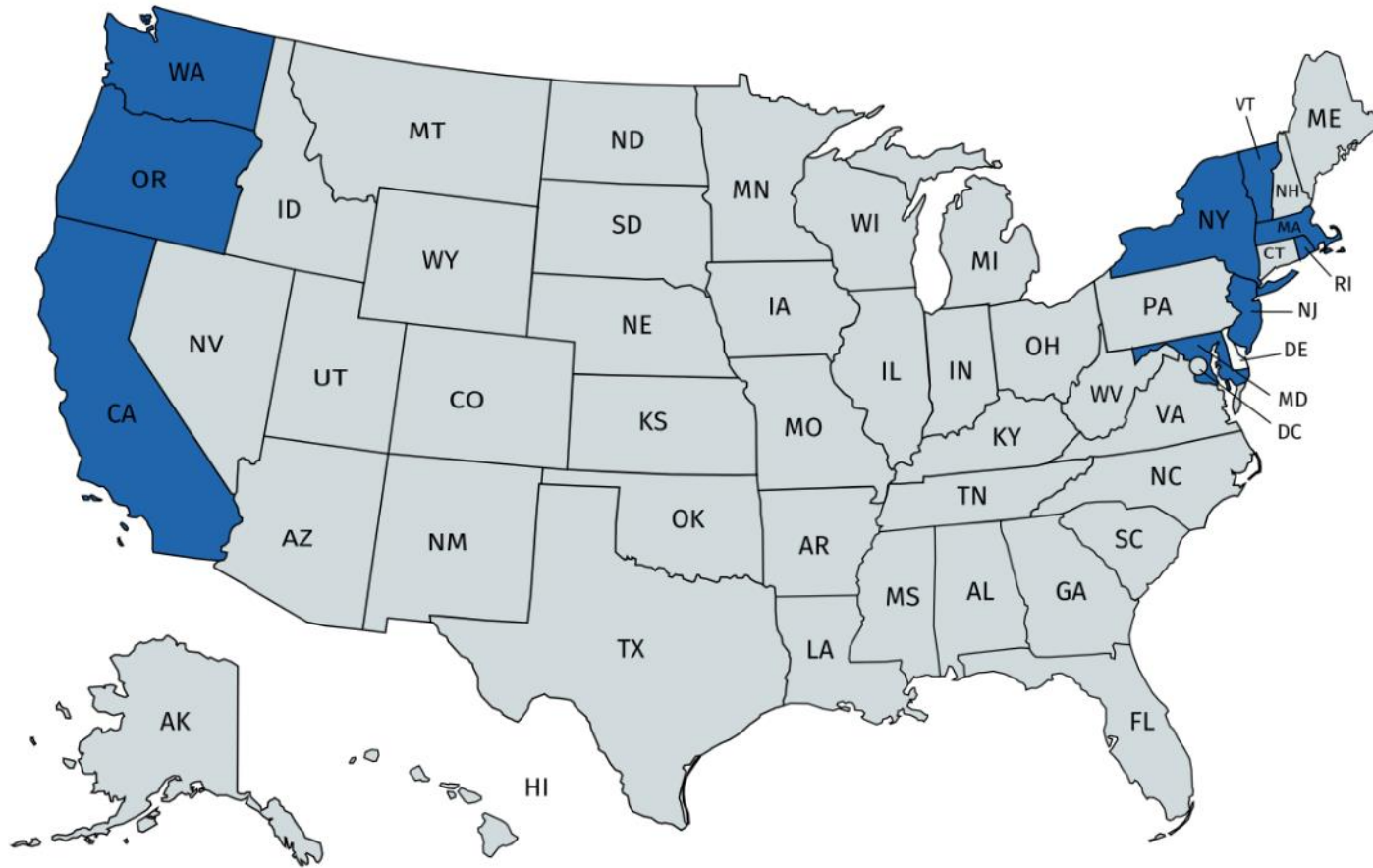


Fighting Forward: Preparing for *Janus*

7. Design an illegality clause and/or impact bargaining strategy.
8. Conduct budgetary and personnel analysis.
9. Anticipate litigation strategies.
10. Evaluate possible legislative and regulatory actions and counter actions.



Legislation in the States



Legislation in the States

- Employee Orientation
 - “A public employer shall provide all public employees an orientation and shall permit the exclusive representative, if applicable, to participate.”
 - Work in conjunction with collective bargaining agreements
- Evergreen Clauses/ Continuation of Collective Bargaining Agreements
 - Maintain status quo until new CBA agreed to by both sides
 - Already law in California, Connecticut, New Mexico, New York



Legislation in the States

- Strengthen the Protection of Member Personal Information
 - Requester show a “clear and convincing public interest” to be granted certain public employee personal information
 - Individual or union can challenge the scope of the request
- Clarifying Dues Deduction Rules
 - Expressly recognize a signed dues authorization card as a contract and empowers the union to set dues revocation procedures in any way that does not violate federal law; OR
 - State law sets dues revocation procedures, window when a member can drop dues deduction, form revocation must take



Legislation in the States

- Public Employer Neutrality
 - Employers cannot encourage union members to drop membership and cannot encourage or discourage employee from exercising a right under law to join, form or assist an employee organization.
- Expansion of Collective Bargaining Rights
 - Part-time and other types of public employees previously excluded from bargaining units
- Tax Preference for Union Dues
 - New York (so far)
 - First state to allow private and public sector union member to deduct the full amount of their union dues on their state income tax filings



Legislation in the States

- Union as exclusive representative maintained in all of these bills, as well as the union's duty of fair representation to members and nonmembers
 - Why maintain duty of fair representation?
 - Benefits or burdens of exclusive representation?



Questions & Additional Information

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