September 28, 2017

Supreme Court to Hear Anti-Union Janus v. AFSCME Council 31 Case

On September 28, the US Supreme Court announced that it will hear a case, called Janus v. AFSCME Council 31, which anti-union forces have pushed in an attempt to have fair-share fees ruled unconstitutional for public-sector employees.

Currently, unions can charge fair share fees (also called “agency fees”) to non-union members for the cost of the union negotiating and enforcing a collective bargaining agreement covering those individuals. Fair share fees have been deemed constitutional since the Supreme Court’s 1977 decision in Abood v. Detroit Board of Education. Over the last forty years, the courts have repeatedly found that the fair share fee system adequately balances the interests of the employees and the state in an efficient labor relations system and the First Amendment interests of union members and nonmembers. However, in a 2014 decision, Harris v. Quinn, Justice Samuel Alito questioned whether Abood was good law and virtually invited challenges to the constitutionality of fair share fees. In this opinion, Alito claimed that all fair share fee arrangements in the public sector could violate the First Amendment as they compel nonmembers to pay for activities that may address matters of public concern and are therefore “political.” Anti-union groups took up Justice Alito’s invitation and have pushed a number of cases through the courts.

Last year, the Supreme Court took up such a challenge in Friedrichs v. Cal. Teachers Ass’n. Many organizations filed briefs on both sides, and the AAUP filed an amicus brief in support of the constitutionality of fair share fees. While initially a majority of the Court seemed poised to find fair share fee unconstitutional, the death of Justice Scalia left the Court equally divided, with four justices likely in favor of finding fair share fee constitutional and four opposed. The Court issued a summary decision that did not address the substantive question. Unfortunately, recently appointed Justice Neil Gorsuch may side with the four conservative justices, and thus in revisiting the issue the Supreme Court could find fair share fee unconstitutional, at least in the public sector.

The Supreme Court will next schedule briefing and oral argument. The AAUP anticipates submitting an amicus brief arguing that fair share fees are constitutional. Any decision will probably be issued by the time the Supreme Court term ends in late June 2018. If a decision is issued holding fair share fees unconstitutional, it would likely be effective the day it is issued.

This legal threat to union rights is part of a broader effort to weaken unions as effective representatives for working people. The AAUP will fight these attacks. We anticipate submitting
an amicus brief arguing that fair share fees are constitutional. And our chapters will continue to organize to defend higher education as a public good.