

Commentary:

A Supreme Court ruling for Janus would be judicial activism at its worst

Stephen Roberts, with the American Federation of State, County and Municipal Employees (AFSCME), holds up a sign against Mark Janus during a rally outside of the Supreme Court on Feb. 26, 2018, in Washington. (Jacquelyn Martin / AP)

Robert Bruno

Should courts have the power to impose wage cuts, shrink the economy and require private organizations to deliver costly services for free?

Most people would probably say no. Yet this is what could happen when the U.S. Supreme Court issues its ruling in *Janus v. AFSCME Council 31*, expected sometime in June.

At issue in *Janus* — a case that originated here in Illinois — are state laws that require public sector workers represented by unions to share in the cost of collective bargaining over their wages, benefits and working conditions through the payment of what are called “fair share” fees.

“Fair share” fees are not union dues and cannot be used for politics or lobbying. They are limited to the direct cost of negotiating and enforcing employment contracts.

The legality of “fair share” laws — which currently affect 5 million teachers, firefighters, nurses and other public sector workers in 23 states and the District of Columbia — was established by the court more than four decades ago.

Ever since, a network of well-funded interests has sought ways to reduce worker earnings by weakening the bargaining power of employees. Setting aside the income inequality that such an agenda accelerates, these interests have also had some success in convincing several Midwestern states to eliminate their fair-share fee payer laws.

In *Janus*, a right-leaning Supreme Court is expected by one vote to nullify the laws of those 23 states, which could invalidate wording in thousands of state and municipal contracts. The change would be an extraordinary act of judicial lawmaking irreconcilable with conservative principles that publicly shame “judicial activism.”

But what could this decision mean for 5 million affected workers, the economy and the labor movement?

To answer this question, I recently partnered with the Illinois Economic Policy Institute to assess the potential impact of the court’s expected *Janus* ruling.

This research, based on U.S. Census and Labor Department data, confirmed that public sector wages are universally lower in states without fee payer laws and unions are much weaker. In fact, wages in public service occupations already lag behind comparable jobs in the private and nonprofit sectors; Janus would exacerbate that pay penalty. And changes to laws related to public sector jobs disproportionately impact African-Americans, who are more likely to work in state and local government and more likely to be union members.

The study concludes that if the court strikes down fee payer laws, the loss of bargaining power for 5 million affected public sector workers will translate to an average wage cut of about \$1,800 per year. The corresponding loss of consumer spending could shrink the national economy by as much as \$33 billion — and by more than \$2 billion in Illinois alone. And union membership in affected states would drop by more than 725,000.

But there are likely to be other effects.

Labor unrest is chief among them. The school walkouts that have recently come to West Virginia, Oklahoma, Arizona and North Carolina — and the poor pay and working conditions that precipitated them — each occurred in states without collective bargaining laws for public sector employees permitting fee payer provisions.

Ultimately, we don't require lawyers, doctors, accountants or large corporations to provide services for free. We don't forbid them from using the fees they do collect for political purposes. Yet when it comes to unions, the courts apply a very different standard.

Janus could take this double standard to an entirely new level by effectively forcing wage cuts on 5 million workers and shrinking our nation's economy.

If that's not judicial activism at its worst, what is?

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