

≡ UNIONS

SECOND CLASS CITIZENS

NO MORE

Five years after a landmark SCOTUS decision, public employees continue exercising their restored freedom of association.

BY
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Five years ago this past summer, the voices of millions of Americans who believe government employees should decide for themselves whether to financially support a union were heard. In a case with far-reaching implications for the teaching profession and education reform, the United States Supreme Court overturned *Abood v. Detroit Board of Education*, a 1977 decision that forced government employees to pay “fair share” fees to a union to cover the cost of collective bargaining.

Mark Janus, a social worker employed by the State of Illinois, convinced the Court that the *Abood* decision violates the First Amendment (*Janus v. AFSCME*).

The High Court’s decision was a fully anticipated restoration of the First Amendment rights of public employees who chose not to join a union but were nevertheless forced to finance union activity as a condition of employment. But the opinion went further than expected, underlining the fundamental nature of speech rights by requiring unions and employers to get the *affirmative consent* of employees *before* deducting any fees from paychecks.

The High Court said, “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.”

Mr. Louis Abood, a teacher from Detroit, would certainly be pleased, had he lived to see the *Janus* victory. He and a group of Detroit school teachers made the same argument following the

unionization of teachers in Michigan in the late 1960s. They said forcing teachers to pay agency fees to cover the cost of collective bargaining violated their speech rights because collective bargaining with a public body is inherently political.

The Court in 1977 agreed that the state could not force public employees to become dues-paying union members, but ruled that forcing employees to pay the costs of collective bargaining was an acceptable “impingement” of the First Amendment. This solved the “free rider” problem and appeased those threatening labor unrest.

Real freedom is having a voice and choice on the job — not being silenced for pushing back against policies that are not working.

The problem? Collective bargaining affects all things political: taxes, spending, and the size and policies of government, such as teacher licensure, salaries and pensions, K-12 curriculum, and student discipline.

In June 2018, the Court admitted its error.

Mark Janus’s victory came with the help of previous legal cases, most notably veteran California teacher Rebecca Friedrichs’ case against the California teachers’ union. She came before the Court to make the same argument two years prior to *Janus*, in 2016. All observers, including government unions, said she won her case, but Justice Antonin Scalia died before the opinion was published. So, Mark Janus picked up the baton to continue the race.

Five years later, the *Janus* decision still matters.



This article is an adaptation of and an update to a feature Catrin Wigfall co-authored in the summer 2018 issue of *Thinking Minnesota*.

“The *Janus* decision is great for education — for children, for families, for the teaching profession. For over 40 years educators have been forced to financially subsidize the social, sexual, and political agenda of the teachers’ unions — against our wills, behind our backs, and as a condition of employment. And children are the victims,” says Friedrichs, founder of For Kids & Country.

It is hard to overstate the importance of teachers and the impact of the educational system on our country. The *Janus* decision will help restore professionalism to teaching and empower educators to communicate more freely what they need to educate tomorrow’s leaders.

“We’re finally free; free to stand together, empower our profession and

***Janus* put the importance of worker freedom center stage, but it only resolved part of the problem.**

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uplift our schools. Educators have been given a gift — the freedom to reject state and national unions. I hope teachers will opt out in large numbers and stand together to reject state and national union bullies and reorganize into local-only associations. That would lead to real education reform,” Friedrichs continues.

Powerful state unions like Education Minnesota and its national affiliates, the National Education Association (NEA) and the American Federation of Teachers (AFT), now must earn the support of teachers — as long as teachers know they are no longer forced to subsidize government unions in order to keep their job.

Unions have had guaranteed revenue



Policy fellow Catrin Wigfall (center) stands on the steps of the U.S. Supreme Court alongside Rebecca Friedrichs (left) during oral arguments of the *Janus* case on February 26, 2018.

for decades, no matter what quality of service they deliver. As a result, unions have become highly political, arrogant, and disinterested in teachers. This has not been good for the women and men they represent or for the students and parents who must live with the results.

With this taken-for-granted approach, teachers’ professional needs have drowned in a political maelstrom. Nonetheless, teachers have tried valiantly to solve educational challenges like the achievement gap, or propose innovative ideas for K-12 curriculum, only to be met with opposition from teachers’ unions and their administrative and political allies. Real freedom is having a voice and choice on the job — not being silenced for pushing back against policies that are not working.

American Experiment has interviewed dozens of teachers who love teaching, but admit the job is getting harder, and less safe, every year. The Minnesota Legislature missed an opportunity during the 2023 legislative session to enact meaningful changes to better protect teachers and students, and there is concern the state’s new discipline policy that bans K-3 suspensions and vague new rules regarding use of force by school personnel, including school

resource officers, could have significant unintended consequences.

With increasing burdens being placed on teachers while their professional needs take a backseat to Education Minnesota’s political priorities, more Minnesota educators continue to say “no thanks” to union membership.

Since American Experiment’s efforts began in 2018 to inform teachers about their rights, Education Minnesota has lost thousands of members. From 2020-21 (the most recent data available), the union lost more than 2,700 members. That is almost two percent of its membership in just one year. This also marks the second consecutive year the state teachers’ union has lost active teacher members and the third consecutive year the union has lost Education Support Professional members (paraprofessionals, teacher aides, etc.). Education Minnesota’s total revenue has also declined just over eight percent from 2018 to 2022, even with the union increasing dues to make up for lost memberships. At the national level, the NEA has lost nearly 8 percent of its active members since *Janus* (excluding student members, retired members, etc.) and the AFT has lost roughly 10 percent.

And it’s not just teachers who don’t feel represented by their union. Other



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state employees have also decided their decades-long union relationship isn't in their best interest. Through American Experiment's Employee Freedom project, workers across the state are separating themselves from polarizing and political views endorsed by the union that they do not share.

Among total public workers in Minnesota employed by government entities with union contracts, nearly a third (31.9 percent) have declined union membership as of 2022 public records requests made by the Mackinac Center for Public Policy. "Since the *Janus* decision in 2018, an increasing number of public employees are exercising their First Amendment right to opt out of union membership, and that trend is likely to continue," concludes Mackinac.

But the monumental win at the Supreme Court five years ago does not mean the fight for individual rights within government unions is done. There are still teachers and other civil servants unaware of the *Janus* decision, the rights now restored to them, the choices now available to them, and what exercising those choices involves. No, you won't lose your seniority, tenure, pension, health insurance or other benefits as a nonmember. Yes, you are still covered under the negotiated contract. No, you cannot be discriminated against based on union membership status. No, you are not a "freeloader" or "free rider" — labor unions fought for the right to represent all employees within their bargaining unit, regardless of union membership status. Unions could lobby to change their exclusive representation rights that are in the law, but if they wish to maintain the monopolistic privilege of exclusive agency, they create the "free rider" claims so often complained about.

And there are still teachers and civil servants whose rights are being violated — from signatures being forged on membership forms to resignations during the union-enforced opt-out "windows" being denied.

That is why efforts like American Experiment's Educated Teachers and Employee Freedom projects are needed and valued.

Janus put the importance of worker freedom center stage, but it only resolved

part of the problem. Antiquated labor laws must be reformed to better protect workers' rights in the 21st century and ensure true workplace democracy. And state policymakers must be vigilant against efforts by union political allies to unravel what the landmark decision promulgated. Federal, state, and local governments have a constitutional duty to protect their workers' freedom of association, particularly given that declining ranks have unions engaging in backdoor methods to safeguard their monopolistic power.

Union executives have no experience

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being customer focused; they have not made the institutional shift to thinking of teachers and other public employees as customers and professionals, instead of as captives and taken for granted. They have deviated from their primary mission — negotiating compensation and working conditions — to making demands aimed at advancing their far-ranging political activism and social agendas. This focus is a detriment to both their members and, in the case of teachers, our children. Unions can't take on everything without ending up doing many things poorly.

While those beholden to the union "scream from the rooftops about how wrong and unfair the *Janus* ruling is, let's pause for a moment and at least acknowledge that, in the context of the teachers' unions, almost no one is even

talking about what's best for kids.... And if the well-being of children — who are mandated by law to attend school — isn't front and center, I don't want to hear the wailing," writes former educator and union member Erika Sanzi for the Fordham Institute.

It's telling when the national teachers' union fails to pass a resolution that says the union will "re-dedicate itself to the pursuit of increased student learning in every public school in America by putting a renewed emphasis on quality education," yet discusses hundreds of motions intent on turning public education into a training ground for political activism — from broad-brushing police as biased and corrupt, increasing abortion rights and mocking the Second Amendment as a societal harm to fighting for preferential treatment based on immutable characteristics, to name a few.

"These union bosses now view themselves as leaders of a radical progressive political movement, not as promoters of the welfare of workers in a specific workplace," writes Mailee Smith with Illinois Policy in *National Review*. "Government unions' desperate search for influence demonstrates that they're dedicated to using their political power to push their agendas, even at the expense of their remaining members' interests."

Pushing back against unions' priorities and their highly charged political agenda is *not* an attack on our civil servants — teachers included. Rather, it's an attempt to get the unions' attention and let them know they are missing the mark on what public employees want them to prioritize.

"...[W]hile great teachers work feverishly to educate children in reading, math, and other core subjects," unions' control of the conversation around education has Americans believing that all teachers agree with the union agenda, states Friedrichs. "We do not. Unions — more aptly named the education mafia — have picked our pockets, exploited our profession, ravaged our students, and dismantled our once-great educational system, all while claiming to represent us."

Teachers and other government employees must continue to exercise their restored rights and let the union know that until it at least learns to respect them, it certainly does not speak for them. ★