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A view of the U.S. Supreme Court building in Washington is seen in this 2015 file photo. (CNS/Jonathan Ernst, Reuters)



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The Supreme Court heard a case Feb. 26 that could erode the rights of labor unions at government workplaces.

The U.S. Conference of Catholic Bishops had filed a brief in the case, Janus v. AFSCME, supporting the union.

The high court had heard a similar case two years ago, but the death of Justice Antonin Scalia after the arguments were heard left the case at a 4-4 deadlock.

Last year, Justice Neil Gorsuch was appointed to succeed Scalia. Gorsuch did not speak during oral arguments in this case.

At issue is whether unions can compel workers who are not union members to pay "fair share" membership fees when those employees work for the government. In some instances, unions are required to deduct the percentage of dues used for political purposes.

Mark Janus, who works for the state of Illinois, contends that all union activity, including contract bargaining, is inherently political. Janus lost the last round of appeals, bringing the case to the Supreme Court. In 1977, the justices unanimously ruled that public-employee unions were entitled to collect fair share fees from nonunion workers, who, like union members, benefit from union bargaining.

Justice Ruth Bader Ginsburg asked one attorney on Janus' side, William Messenger, what made union dues for government employees different from college student activity fees, bar association dues or even private-sector union dues.

Messenger, an attorney with the National Right to Work Legal Defense Foundation, which represents Janus, likened the situation to Hatch Act rules against government employees issuing political speech. The rules prevent government employees "from

being organized into a political machine," he said. "Of course," he added, "those same interests don't justify forcing individuals to support the speech of an advocacy group," which is what he considered unions to be.

Solicitor General Noel Francisco, also advocating on Janus' behalf, cited one Supreme Court precedent in which "the government is allowed to prohibit core political speech when it interferes with the employee's ability to do their job."

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David L. Franklin, an attorney for 23 states that compel workers represented by unions to join the union, countered: "The fact is this court has never applied strict scrutiny to a condition of public employment that was backed by a bona fide interest that the state has as an employer. Never, not once."

"What we're talking about here is a compelled payment of a fee. So it's one step removed from compelled speech," Franklin said later. "It's important to recognize that agency fees are not a 'Man for All Seasons' scenario by any stretch."

He was referring to the case of St. Thomas More, the English Catholic martyr who resisted signing an oath repudiating papal authority and acknowledging the right of King Henry VIII to run the church in England. He was charged with treason and beheaded.

"The Catholic bishops of the United States have long and consistently supported the right of workers to organize for purposes of collective bargaining," the USCCB brief says. "Because this right is substantially weakened by so-called 'right-to-work' laws, many bishops -- in their dioceses, through their state conferences, and through their national conference -- have opposed or cast doubt on such laws, and no U.S. bishop has expressed support for them."

Without union security clauses, which would be made illegal in the Janus case, "unions face a 'free rider' problem that dramatically weakens them and, in turn, their bargaining power on behalf of workers, as experience in 'right-to-work' states to date has borne out," the brief added.

Under questioning by Justice Anthony Kennedy, David Frederick, an attorney for AFSCME Council 31, agreed that union power would be weakened if AFSCME lost the case. (AFSCME stands for American Federation of State, County and Municipal Employees.)

"Isn't that the end of this case?" asked Kennedy. Frederick replied, "It is not the end of this case, your honor, because that is not the question. The question is: Do states, as part of our sovereign system, have the authority and the prerogative to set up a collective bargaining system in which they mandate that the union is going to represent minority interests?"