IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

James M. Sweeney and International Union of Operating Engineers Local 150, AFL-CIO,	)	
Plaintiffs,	)	
v.	)	
	)	Case No.
Bruce V. Rauner, in his official capacity as Governor of Illinois; Lisa M. Madigan, in her official capacity as Attorney General for the State of Illinois; and, Kimberly Stevens, in her official capacity as Executive Director of the Illinois Labor Relations Board,	)	Judge: Magistrate Judge:
Defendants.	)	

COMPLAINT FOR DECLARATORY RELIEF

Count I
Violation of Free Speech Under First Amendment
to the United States Constitution

Introduction

Plaintiffs James M. Sweeney and the International Union of Operating Engineers, Local 150, AFL-CIO ("Local 150") (collectively "Plaintiffs"), hereby files suit against Bruce Rauner, Governor of the State of Illinois, in his official capacity, Lisa M Madigan, Attorney General for the State of Illinois, in her official capacity, and Kimberly Stevens, Executive Director of the Illinois Labor Relations Board, in her official capacity (collectively "Defendants"), arising under the First and Fourteenth Amendments to the United States Constitution and brought under 42 U.S.C. § 1983. In support thereof, Plaintiff alleges the following:

Jurisdiction and Venue

1. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. This Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) because this action seeks to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants reside in this District.

Parties

3. Plaintiff Sweeney is a resident of the State of Illinois and resides in Chicago, Cook County, Illinois. Plaintiff Sweeney is President-Business Manager of the International Union of Operating Engineers, Local 150, AFL-CIO ("Local 150").

4. Plaintiff International Union of Operating Engineers, Local 150, AFL-CIO ("Local 150" or "Union"), is a labor organization and unincorporated association with its primary office in Countryside, Cook County, Illinois. Local 150 represents over 23,000 workers. Of those Illinois resident-members, over 3,000 are subject to the Illinois Public Labor Relations Act (IPLRA). 5 ILCS 315/1, *et seq*.

5. Defendant Bruce Rauner is sued in his official capacity as the Governor of the State of Illinois. On February 9, 2015, Rauner issued an impermissible Executive Order that sought to prohibit the enforcement of contractual fair share provisions agreed to by any and all state agencies on First Amendment grounds. Defendant Rauner publicly takes credit for the United State's Supreme Court's imminent invalidation of fair share payments in the public sector in *Janus v. AFSCME*, Case No. 16-1466.

6. Defendant Lisa M. Madigan is sued in her official capacity as the Attorney General for the State of Illinois. Defendant Madigan has responsibility for enforcing Illinois's criminal laws and assisting local prosecutors.

7. Defendant Kimberly Stevens is sued in her official capacity as Executive Director of the Illinois Labor Relations Board, which is responsible for enforcing and resolving disputes arising under the IPLRA. 5 ILCS 315/5, *et seq*.

Legal Background

8. There is now pending before the United States Supreme Court a case titled, *Janus v. AFSCME*, Case No. 16-1466. In it, the Court will consider the question, "Should *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), be overruled and public sector agency fee arrangements declared unconstitutional under the First Amendment?" BRIEF FOR THE PETITIONER at i.

9. *Abood* says that public employers and the union representatives of their public employees can negotiate collective bargaining agreements which include union security clauses requiring individuals to pay fair share fees as a condition of employment. Such fees, however, can only be used for negotiation and administration of collective bargaining agreements and cannot be used for political purposes, lest they violate the First Amendment.

10. In *Harris v. Quinn*, 134 S.Ct. 2618 (2014), the Court held that home healthcare workers should not be required to pay union fees. In so doing, however, the Court in *Harris* blurred the distinction between collective bargaining and political advocacy stating that "in the public sector, both collective bargaining and political advocacy and lobbying are directed at the government," and that common subjects of collective bargaining "such as wages, pensions, and benefits are important political issues." 134 S.Ct. at 2632-33.

11. In 2015, newly elected Illinois Governor Bruce Rauner introduced his "Turnaround Agenda"—a package of anti-union measures including attacks on union security. Rauner urged local municipal governments to pass ordinances creating so-called "Right-to-Work zones;" and filed suit in federal court with himself as the lead plaintiff, arguing that required payment of fair share fees to public sector unions was unconstitutional under *Harris*.

12. The Illinois courts dismissed Governor Rauner from the suit for lack of standing, but allowed three Illinois state employees including Mark Janus to intervene. *Janus v. American Federation of State County and Municipal Employees Council 31*, Case No. 16-1466, BRIEF FOR THE PETITIONER at 7-8. According to the petitioner, "*Abood* was wrongly decided because bargaining with the government is political speech indistinguishable from lobbying the government." *Id.* at 8.

13. If, however, it violates the First Amendment right of a non-member to be compelled to pay fees to the union that is required by law to provide representation and services, it equally violates the rights of the union and its members to require them to use their money to speak on behalf of the non-member. This is so because the right to speak and the right not to speak are two sides to the same coin. Hence, the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all. Similarly, freedom of association plainly presupposes a freedom not to associate.

14. Legal scholars, academics and commentators overwhelmingly agree that the petitioner will prevail on First Amendment grounds in *Janus*. (attached as Exhibit A).

15. Moreover, many agree that to invalidate fair share fee agreements based upon the First Amendment would result in reciprocal First Amendment protections for labor unions and members.

16. 42 U.S.C. § 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State...subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress…

17. The IPLRA is a set of administrative laws by which the Illinois Labor Relations Board "regulate[s] labor relations between public employers and employees, including the designation of employee representatives, negotiation of wages, hours, and other conditions of employment, and resolution of disputes arising under collective bargaining agreements." 5 ILCS 315/2.

18. Among other things, the IPLRA governs under what circumstances a labor union becomes the "exclusive representative" for the employees of a particular bargaining unit for purposes of collective bargaining. 5 ILCS 315/6 reads, in part, as follows:

> A labor organization designated by the Board as the representative of the majority of public employees in an appropriate unit in accordance with the procedures herein or recognized by a public employer as the representative of the majority of public employees in an appropriate unit is the exclusive representative for the employees of such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours and other conditions of employment not excluded by Section 4 of this Act.

19. Under the IPLRA, where a labor union is an exclusive representative, it owes a "duty of fair representation" to all employees in the bargaining unit. 5 ILCS 315/10(b)(1)(ii) reads, in relevant part, as follows:

> It shall be an unfair labor practice for a labor organization or its agents:(1) to restrain or coerce public employees in the exercise of the rights guaranteed in this Act, provided...(ii) that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act…

20. At the same time, the IPLRA allows for a labor union that is an exclusive representative to charge non-member bargaining unit employees fair share fees for expenditures that are germane to collective bargaining. 5 ILCS 315/10(b)(1)(i) reads, in relevant part, as follows:

> It shall be an unfair labor practice for a labor organization or its agents: (1) to restrain or coerce public employees in the exercise of the rights guaranteed in this Act, provided, (i) that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein or the determination of fair share payments.

21. The ILPRA categorically restricts which subjects of bargaining a labor union can require an employer to bargain over. 5 ILCS 315/4 in part reads:

> Management Rights. Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives, except as provided in Section 7.5.
>
> Employers shall be required to bargain collectively with regard to any matter concerning wages, hours or conditions of employment about which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act, except as provided in Section 7.5.

22. After *Harris*, all bargaining performed by labor unions pursuant to the IPLRA on behalf of non-members necessarily implicates the First Amendment because any bargaining with the government is treated as political and therefore as compelled speech. (*see Harris v. Quinn*, 134 S. Ct. 2618, 189 L. Ed. 2d 620 (2014); *see also Janus v. American Federation of State County and Municipal Employees Council 31*, Case No. 16-1466, BRIEF FOR THE PETITIONER at 7-8).

23. Because labor unions are required to engage in bargaining and other activities that are owed under the duty of fair representation on behalf of non-members under the IPLRA, if *Janus* is decided as most commentators expect, the unions and their members would also suffer

the same infringement of their First Amendment right to freedom of speech and association.

24. Forcing unions to advocate on behalf of non-members who object to the very reasons they exist is a severe violation of unions' First Amendment rights to association.

25. Additionally, when "unions are forced to use their general treasury funds to subsidize the costs of these services, this drains a union's reserves, directly affecting its abilities to spend on First Amendment activities including, most importantly, political speech." (Fisk & Poueymirou, *supra*, at 488).

26. Because unions' rights to bargain collectively are protected by the First Amendment, IPLRA management rights clause unconstitutionally restricts the rights of labor unions and members to negotiate over all subjects of bargaining with a government employer.

Factual Allegations

27. Local 150 represents over 3,000 employees within approximately 130 public sector bargaining units in Illinois. Because Local 150 has been forced to expend significant resources in anticipation of a *Janus* decision that invalidates fair share arrangements, the IPLRA has caused and continues to cause irreparable injury to Plaintiff Local 150.

28. If *Janus* overrules *Abood*, all union speech directed to the government will be considered inherently political in nature, indistinguishable from lobbying the government. The exercise of free speech, including political speech, is a fundamental First Amendment right under the U.S. Constitution. Therefore, all subjects of collective bargaining between Plaintiff Local 150 and the government are fundamental rights protected by the First Amendment. By categorically restricting mandatory subjects of bargaining, the IPLRA is a content-based restriction on Plaintiff Local 150's right to free speech under the First Amendment to the U.S. Constitution. Further, the IPLRA's mandate of a duty of fair representation on labor unions compels Plaintiff Local 150 to

subsidize the speech and/or speak on behalf of non-members who refuse to pay in violation of its right to free speech under the First Amendment to the U.S. Constitution.

WHEREFORE, Plaintiffs respectfully request the following relief:

a. A declaration that 5 ILCS 315/10(b)(1)(ii) violates the First and Fourteenth Amendments to the U.S. Constitution both facially and as-applied by restricting Plaintiffs' free speech rights;

b. That this Court award Plaintiffs' costs and expenses, including its attorneys' fees, pursuant to 42 U.S.C. § 1988; and,

c. Such other relief as the Court deems just and equitable.

Count II
Violation of Freedom of Association Under First Amendment to the United States Constitution

1-28. For Paragraphs 1 through 28 of this Count II of the Complaint, Plaintiffs restate and reallege paragraphs 1 through 28 of Count I of the Complaint as is fully set forth in Count II herein.

29. The First Amendment protects against State prohibition of association and, conversely, State punishment or penalty for the exercise of associational rights. The right of employees to self-organization and to select representatives of their own choosing for collective bargaining without restraint by their employer is a fundamental right.

30. Although under the IPLRA a labor union must provide services to all within their unit, *Janus* will eliminate fair share agreements that would require members to pay their proportionate share of the cost of providing those services. This creates free-riders thereby increasing the financial burden on dues paying members.

31. Therefore, post-*Janus*, the IPLRA provisions pertaining to the labor union's duty of fair representation creates penalties for the exercise of associational rights by discouraging

membership and by making membership financially burdensome. These provisions adversely affect the ability of Plaintiffs to pursue collective efforts thereby infringing on Plaintiffs' associational rights.

WHEREFORE, Plaintiffs respectfully request the following relief:

a. A declaration that 5 ILCS 315/10(b)(1)(ii) violates the First and Fourteenth Amendments to the U.S. Constitution facially by restricting Plaintiffs' association rights;

b. That this Court award Plaintiffs' costs and expenses, including its attorneys' fees, pursuant to 42 U.S.C. § 1988; and,

c. Such other relief as the Court deems just and equitable.

Dated: February 22, 2018

Respectfully submitted,

By: /s/ Dale D. Pierson
One of the Attorneys for Plaintiffs

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EXHIBIT A

ACSblog
AMERICAN CONSTITUTION SOCIETY

Beware the Unintended Consequences of Janus

February 20, 2018

by Ann C. Hodges, Professor of Law Emerita, University of Richmond

This is part of **ACSblog's Symposium on Janus v. AFSCME*

With oral argument scheduled February 26 and Justice Gorsuch on the bench, conventional wisdom is that the Supreme Court is poised to reverse forty years of precedent in *Janus v. AFSCME*. *Janus* is one piece of a longstanding campaign by conservative groups to reduce the power of unions.The desires of many conservatives to weaken unions by removing their power to collect fees from employees they are compelled by law to represent appear to have blinded them to the potential unintended consequences of *Janus*. A **brief** filed by conservative scholars, however, reveals that some are beginning to awaken to the potential for *Janus* to disrupt existing constitutional doctrine, the **ability of government employers to control their workforces**, and stable labor relations in the United States.

The uniquely American system of labor relations relies on the doctrine of exclusive representation to insure that employers will have to deal with only one union, if chosen by a majority, for each bargaining unit of employees that have similar jobs and common interests. As a corollary, the union is required to represent all employees in the bargaining unit fairly, even if the employees choose not to join the union. Because the union is mandated to represent the employees, many states allow the union to charge nonmembers a fee for representation. In 1977, the Supreme Court upheld such fees as constitutional in ***Abood v. Detroit Board of Education*** so long as the fees were used for collective bargaining and contract administration and not for any unrelated activities of the union. Janus, however, argues that *Abood* must be overturned because all activities of the union, including collective bargaining and contract administration, constitute protected political speech, and the plaintiff cannot be compelled to fund such speech.

The consequences of a ruling for the plaintiff are enormous, and not just for unions. If one pillar of the labor relations system is removed, the **system may disintegrate**, resulting in multiple unions representing the same groups of employees, competing with one another to obtain the best contract for their members.The employer will be required to contend with several unions demanding different wages and working conditions. Further, unions and their members will have their own constitutional claims if unions are required to represent employees without compensation. The speech rights of unions and their members are impaired if they must expend resources that could otherwise be used for their own speech to represent nonmembers without compensation. Additionally, if the objecting nonmembers have a right not to associate with the union, then the union members have a corresponding right not to associate with the objectors. Also, a mandate for free representation implicates **due process**, for the union's property is being taken without compensation.

A ruling that all union activity is political speech has additional ramifications. Courts have regularly ruled that states like **Wisconsin** can provide collective bargaining rights to some groups of employees and not others, using the rational basis test to find no equal protection violation. Similarly, courts have allowed states to provide payroll deduction to some groups and not others on the same grounds. But if all union activity is protected political speech, then these distinctions implicate fundamental rights, invoking strict scrutiny for such classifications. Thus, the differential treatment of employee groups by the states may not survive. Indeed, unions may even have an argument that there is a constitutional right to collective bargaining.

Equally unlikely to survive are many governmental employer restrictions on employee speech. A long line of cases allows government employers to impose various restrictions on employee speech. The Supreme Court distinguishes **employee speech** from citizen speech, permitting employers to limit and control employee speech in the interests of the government as employer. When employees speak about their own terms and conditions of employment as opposed to matters of concern to the public, employers typically prevail in cases where they have disciplined or discharged employees for their speech. A ruling in favor of the *Janus* plaintiffs could obliterate the distinction, requiring employers to tolerate much unwanted speech by their employees.

Finally, if Janus prevails, the case will cast doubt on many other situations where the government requires payments from individuals that are used for purposes to which they object. As scholars, **unions**, and indeed the Court itself, have noted, **taxes**,

bar dues, **university student fees**, **utility bills**, **insurance premiums**, **government pension funds**, **continuing education requirements for licensing**, and **homeowners' association dues** involve government-compelled payments, sometimes to third party organizations that may use them for lobbying or other activity objectionable to those making the payments. If such payments are open to challenge on First Amendment grounds, the Court may have opened Pandora's box.

There is a simple way to keep Pandora's box closed. Reject the arguments of the *Janus* plaintiff and reaffirm *Abood*, which has served the country well for more than forty years.

NATION

Supreme Court may deal blow to labor unions

Richard Wolf
USA TODAY

The Supreme Court is on the verge of ruling against public employee unions in states such as Illinois, where teachers went on strike in 2012.
SCOTT OLSON/GETTY IMAGES

WASHINGTON – The nation's powerful public employee unions stand to lose membership, money and political muscle at the hands of the Supreme Court this year. The only question appears to be how much.

On the court's docket next month are fees paid in 22 states by police, firefighters, teachers and other government workers who decline to join unions that must represent them anyway. But much more is at stake in a nation with declining union membership and growing economic inequality.

After three tries in 2012, 2014 and 2016, the high court is poised to reverse its own 40-year-old precedent and strike down the so-called fair share fees as unconstitutional. The 1977 ruling said workers did not have to pay for unions' political activity. The verdict expected by June would allow them to contribute nothing.

If the court's five conservatives vote the way both sides anticipate, public employee unions in traditionally Democratic states in the Northeast and West will lose those workers and the fees they pay. Other lawsuits could follow if workers are allowed to seek refunds for fees.

And unions are braced for a slow bleed of full dues-paying members. Until now, those workers could save only about 10% to 20% of their costs by quitting the union; a ruling against fair-share fees would enable them to become "free riders." That could force unions to raise dues on those who remain or lose clout in states such as California, New York, Illinois, Pennsylvania and New Jersey.

"If they don't see this coming, they're totally blind," says Daniel DiSalvo, of the conservative Manhattan Institute. He predicts unions could lose from 10% to 30% of their membership and financing over time.

The case, *Janus v. American Federation of State, County, and Municipal Employees*, will be heard Feb. 26. It's backed by conservative groups that have tried to overturn the decision in *Abood v. Detroit Board of Education*, which upheld charging non-members fees to pay for collective bargaining, but not politics.

The court has ruled 7-2, 5-4 and 4-4 on similar cases in the past six years, eating away at that 1977 decision without overruling it. In 2016, Justice Antonin Scalia's death denied conservatives a fifth vote — a vote Justice Neil Gorsuch is expected to provide.

Less assured is the impact such a ruling would have on organized labor in general. But after a 70-year decline in union membership, the consensus is for more of the same.

"If there is no union security in the public sector, we will see the diminution of union density, which is already miniscule in this country," says Angela Cornell, director of Cornell Law School's labor law clinic.