

1st Amendment

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VIEWPOINTS

“When government and unions work hand-in-hand to seize money from employees, constitutional protections must apply.”

Lower courts ignore Supreme Court precedent to force union payments

Courts, unions, state governments must respect Janus decision

By Jessica Wyeth | August 2025

Should public employees retain the right to stop supporting a union, regardless of a prior written membership agreement, as guaranteed by the U.S. Supreme Court?

The National Right to Work Legal Defense Foundation and the Mackinac Center for Public Policy are urging the U.S. Supreme Court to answer that question. In an amicus brief filed July 24, the two organizations ask the Court to reaffirm and enforce the constitutional standard it set in the 2018 *Janus v. AFSCME* decision: that no money may be taken from a public employee's paycheck for a union without the employee's clear and affirmative consent.

The brief supports two public workers who are respectively suing the American Federation of State, County, and Municipal Employees as well as the International Union of Operating Engineers. Marcus Todd and Terry Klee are challenging union

deductions that were made without their consent and with the help of state officials.

Since *Janus*, which recognized that public workers have a First Amendment right to opt out of union membership and payment, states and unions have acted to undermine that ruling. At least 17 states enforce laws that restrict when employees can stop payroll deductions for union dues — some allowing opt-out only during narrow windows once per year, or even once per multi-year contract.

Worse still, lower federal courts are increasingly enabling these restrictions. Six U.S. Circuit Courts have ruled that governments and unions can keep deducting dues from nonmembers' paychecks without clear evidence that those employees knowingly and voluntarily waived their First Amendment right to opt out. Instead of requiring the “clear and compelling evidence” of consent that *Janus v. AFSCME* demands,

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the courts have allowed union contract fine print and procedural hurdles to stand.

The Ninth Circuit has gone the furthest in eroding Janus. In *Wright v. SEIU Local 503*, the court held that states can seize union dues from employees' pay based solely on a union's assertion of consent — even if that claim is false or unverified. Making matters worse, the Ninth Circuit ruled that unions are not “state actors” and thus not bound by constitutional limits, despite being the ones directing the government's paycheck deductions.

This interpretation runs directly counter to Janus and the long-standing Supreme Court precedent on what constitutes state action. When government and unions work hand-in-hand to seize money from employees, constitutional protections must apply.

As a result of this trend, millions of public employees in states like California, Oregon, and New York may find themselves trapped paying for union speech they oppose, simply because they missed an arbitrary

10- or 15-day window to opt out. Some employees have even been forced to keep paying for years after resigning union membership.

This is not what the Supreme Court intended in Janus. These lower court decisions allow states and unions to sidestep the Constitution through bureaucratic procedures and legal loopholes.

It's time for the Supreme Court to intervene and clarify that constitutional rights don't expire outside a narrow window or get signed away unknowingly in the fine print.

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